

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Pronounced on: 30.09.2025

**Bail App No. 228/2024
CrIM No. 1448/2024**

Irfan Rashid Rather

...Petitioner(s)

Through: Mr. A.R. Khan, Advocate

Vs.

**Union Territory of J&K Th. Superintendent ...Respondent(s)
District Jail Amphalla Jammu and Anr.**

Through: Mr. Vishal Bharti, Dy. AG

CORAM:

**HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE
ORDER**

1. Through the medium of the instant successive application filed in terms of the provisions of Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Code" for short) corresponding to Section 483 of the BNSS, 2023, petitioner/accused has sought grant of bail in his favour in the criminal case bearing FIR No. 282 of 2021 dated 12.09.2021 titled "*U.T of J&K through Police Station Samba Vs. Arif Ahmed Parray and Others*", on the grounds *inter alia* that he is innocent and has been falsely implicated in the case FIR; that he has been implicated in the case FIR, on the basis of the alleged disclosure of the co-accused; that he stands arrested in the case on 18.02.2022 and since then he has

been in custody in the case; that the final police report/challan arising out of the case FIR in question, stands already filed before the competent Trial Court i.e. the Court of learned Additional Sessions Judge, Samba, and is pending trial; that he along with the co-accused, came to be formally charged for the commission of the offences punishable under Sections 8/15, 29 of the Narcotic Drugs and Psychotropic Substances Act 1985, (hereinafter referred to as “NDPS Act” for short), pursuant to the order of the learned Trial Court dated 28.01.2023 and upon their pleadings not guilty to the charge, the prosecution was directed to lead evidence in support of its case; that out of 23 listed witnesses only 03 witnesses have been examined in the case up to date of filing of application and none of them have deposed anything against the petitioner/accused; that he applied to the learned Trial Court for grant of bail in his favor on 07.03.2024 but his application came to be rejected by the learned Trial Court vide its order dated 31.08.2024 without assigning any plausible ground or reason; that his involvement based on the confessional statement of co-accused is bad under law as has already been held by the Hon’ble Supreme Court of India in case titled **“Tofan Singh vs State of Tamil Nadu”**; that the trial in the case is going on at a slow pace and during the period of about three years from the date of calling the prosecution evidence, even the half of the witnesses have not been still examined which has violated his right to speedy trial guaranteed under the Constitution of India; that he is neither

a history-sheeter nor having any previous criminal record at his back, who has been involved falsely and frivolously in the case; that he is presumed to be innocent until proved guilty at the conclusion of the trial; that the basic object of bail is to procure the attendance of accused during trial so as to face the judgment after the conclusion of the trial for which he is readily available; that he shall abide by any conditions that this Court may deem proper while granting him the concession of bail; that there is no impediment in granting bail to him as there is no evidence at all regarding his involvement in the case and that he shall remain punctual at the trial and shall not make any attempt to tamper with the prosecution evidence.

2. The bail application has been resisted by the contesting respondent No. 2 as per the memo of objections filed through Sri Vishal Bharti, learned Dy. AG, Jammu, on the main grounds that the involvement of the petitioner/accused came to be fully established during investigation of the case as the co-accused, from whose possession the contraband was seized from the truck disclosed his name as their guilty partner. That, upon arrest of the petitioner pursuant to the disclosure of the co-accused Call Detail Record (CDR) in respect of his cell phone was obtained from the concerned service provider which corroborated that he was in touch with the co-accused since some days prior to the date of the occurrence. That the petitioner was also during investigation found to be the person

who purchased the vehicle truck in question bearing registration number JK03C/9848 last in point of time from which the contraband came to be recovered and seized. That the petitioner was also during investigation found to be involved in another case FIR bearing number 364/2021 under Sections 8/15, 29 of the NDPS Act of Police Station, Nagrota, in which case the final report/chalan is pending before the Court of learned Additional Session Judge, Jammu.

3. It is profitable to reproduce the objections filed by the contesting respondent No. 2 in rebuttal, for the sake of convenience:-

1. *“That the present Bail application is not maintainable as the petitioner has committed the Offences in a case FIR No. FIR no. 282/2021 U/S 8/15/29 NDPS Act has been registered at P/S, Samba.*

2. *That the answering respondent respectfully submit that the Hon'ble Apex Court of India has underlined the guidelines for criminal courts of the country and laid down principles to be taken into consideration at the time of grant of bail. These principles have been embodied in Kalyan Chandra Sarkar Versus Rajesh Ranjan alias Papu Yadav and another (2004) 7 SCC 253, Gurcharan Singh Vs State Delhi Administration AIR 1978 (SC) 179. All these guidelines have distilled in a recent Judgment of Hon'ble Supreme Court in Jayendra Saraswati Swamigal Vs State of Tamil Nadu AIR 2005 (SC) 716 and basically they are the nature and seriousness of the offences, character of evidence, circumstances which are peculiar to the accused, reasonable possibility of the presence of the accused not being*

secured at the trial, reasonable apprehension of the witnesses being tempered with and above all, larger interest of the public or the state and other similar factors which may be relevant in the facts and circumstances of each case. The allegations against the petitioners are serious; any concession of bail in favour of the petitioners would not be in the interest of the society at large. It is respectfully that it is a settled law that Bail may be refused if there is likelihood of the applicant interfering with the witnesses for the prosecution or otherwise polluting the process of justice. The present Bail Application is thus required to be dismissed.

REPLY ON MERITS:-

1. That on 12-09-2021, on the written Docket by Naka Incharge ASI Harnam Singh No. 925977/EXJ near camp naka point Mansar produced by Ct Showket Ahmed No. 585/S of PP Mansar. The contents of the docket are reproduced as under: "He (ASI Harnam Singh EXJ 925977) alongwith HC Arvind Dev Singh No. 305/S, Ct Parvez Ahmed No. 685/S and Ct. Showket Ahmed No. 585/S was deputed for Day Naka duty at Naka point Mansar. During the naka checking at about 1430 hrs one Truck bearing registration number JK03C-9848 which was coming from Udhampur towards Samba was stopped for checking purpose. During the checking of said truck 26 plastic bags. (Boriya) was found in the said truck. On checking of the said plastic bags Poppy Straw (Bhukie) like substance weighing approximately 20/25 kg each bag was found in these bags. On enquiry, driver and Conductor of the said truck could not provide any cogent reply regarding the transportation of said

recovered substance. On further enquiry Driver of the truck disclosed his name as Arif Ahmed S/o Ghulam Hassan R/o Near Masjid Sharief Mataygund Hillar Shahabad Dooru Anantnag and Conductor disclosed his name as Shabbir Ahmed S/o Habib Ullah R/o MataygundChangooDoru Anantnag. In view of the above fact, it is ample clear that the above named persons are indulged in sale/purchase of poppy straw as the 26 plastic bags containing poppy straw like substance has been recovered from their possession which was carrying by the both persons in their truck. By doing this act the both the persons has committed offences U/S 8/15 NDPS Act. Hence Docket has been prepared in hindi and sent to P/S Samba through Ct Showket Ahmed No. 585/S of PP Mansar with the request to register the FIR and depute an I/O for Investigation. The spot is sealed. Dated 12/09/2021 SD/- in English, Incharge Naka Point Mansar ASI Harnam Singh EXJ 925977". On the above said Docket case FIR No. 282/2021 under sections 8/15 NDPS Act got registered at Police Station Samba and investigation of the case was entrusted to Insp Sandeep Singh EXJ-109577, the then I/C PP Mansar.

2. That during the course of investigation, I/O Immediately visited the spot, Inspected the scene of crime, prepared site plan shown by the complainant I/C Naka and conducted photography that there after naka incharge ASI produced before him 26 plastic gunny bags containing Poppy Straw like substance in presence of witness, on weighing which was found 26 kg in one plastic gunny bag, 25kgs in sixteen plastic gunny bags, 24kg in one plastic gunny bag, 22 kg in two plastic gunny bags, 21kgs in one plastic gunny bag, 19 kgs in two

plastic gunny bags, 16 kgs in one plastic gunny bag and 13 kgs in two plastic gunny bags each plastic i.e. 595 kgs in 26 plastic gunny bags, out of which 01/01 sample weighing 200/200 grams were extracted for chemical analysis/expert opinion from FSL Jammu, sealed the seized contraband and marked as "A to Z" and "A1 to 21" respectively. All the 52 exhibits marked as "A to Z" & "A1 to Z1" were resealed by the EMIC Mansar. Exhibits marked as "A1 to Z1" were deposited in FSL Jammu for chemical analysis/expert opinion. I/o then seized the truck bearing registration No. Jk03C/9848 in presence of witnesses in the presence of witnesses which was used as conveyance for commission of crime along with the mobile phones of the accused persons. Through seizure memo (dar zabti) of Poppy straw like substance, seizure memo of truck got prepared. After completion of other legal formalities, I/o recorded the statement of eye-witnesses under section 161/Cr.PC. The seals used for sealing the exhibits, kept on Supradnama with Ct. Aushtaq Ahmed No. 405/S posted at PP Mansar. Thereafter, I/o Arrested the involved accused persons namely Arif Ahmed Parray S/o Ghulam Hassan R/o Near Masjid Sharief Mataygund Hillar Shahabad Dooru Anantnag and co-driver Shabbir Ahmed S/o Habib Ullah R/o Mataygund Changoo Doru Anantnag following proper guidelines. Further, obtained the CDRS, CAF & Tower locations of involved mobile numbers, and also obtained the certificates U/S 65-B of Indian evidence act. Visited Kashmir for the search/arrest of the other accused involved in the instant case, and also for recording the statements of registered owner of truck bearing registration no JK03C/9848 U/S 161/Cr.PC. Obtained the custody of accused person namely Irfan Rasheed Rather

S/O Abdul Rashid Rather R/O iqbal Colony sheikhpora Dialgam Distt Anantnag, who is a party to this criminal conspiracy. The accused sent to 1 Jammu for sustained interrogation and obtained JIC Reports from JIC Miran Sahib Jammu of the accused persons and as per the report's Involvement of Irfan Rashid Rather S/O Abdul Rashid Rather R/O Khanpora Dialgam Anantnag has been established as well. Recorded the statement of all the witnesses under section 161/Cr.PC. On 01/12/2021 Insp Sandeep Singh Chib No. 109577/EXJ was transferred from PP Mansar and PSI Nirmal Singh No. 196444/EXJ joined as I/C PP Mansar and took over the further investigation. During further course of investigation. I/o analyzed the CDR/CAF and Tower location of mobile 7051215337 was functioning/existing on the name of accused Arif Ahmed Parray S/o Ghulam Hassan R/o Near Masjid Sharief Mataygund Hillar Shahabad Dooru Anantnag, whereas other sim card (no. 8899123287) used in the same mobile phone is functioning/existing on the name of Amir Bhat S/O Mohd Yousaf Bhat R/O 67 Nowbugh near masjid Teh. Devsar Qazigund Distt Kulgam and 6005143123 functioning/existing on the name of accused Irfan Rasheed Rather S/O Abdul Rashid Rather R/O Khanpora Dialgam Teh. & Distt. Anantnag Kashmir, on in depth analysis they both are in constant calling touch with each other for the past three months and on dated from 07/09/2021 to 10/09/2021 they were found at the same location for maximum time in anantnag i.e during the time of loading the vehicle. As per the statement of Imtiyaz Ahmed Khanday S/O Mohd Rajab Khanday R/O Danjam Qzigund Distt Anantnag, he was the registered owner of the vehicle bearing registration no. JK03C/9848, but he the same to Mohd Iqbal

Ganie S/O Ghulam Ahmed Ganie R/O Hasanpora Brijbehara Distt Anantnag in the year 2018. Thus the statement of Mohd. Iqbal were recorded, he had also sold the truck bearing registration no JK03C/9848 to Muzaffar Hussain Dass S/O Mohd Hussain Dass R/O Wagama Brijbehara Distt Anantnag in the year 2018 itself.

3. That as per the statement of Shoket Ahmed Itoo S/O Ali Mohd Itoo R/O Dialgam Teh. Kokernag Distt Anantnag, accused namely Irfan Rashid Rather S/O Abdul Rasheed Rather R/O Khanpora Teh. & Distt Anantnag purchased the vehicle Truck bearing Registration No. Jk03C/9848 from him on dated 08/09/2021 at a cost of 11,37,500/- but on the name of Javid Ahmed (not known to him). Mode of payment was through Cheque, online mode and cash. During further sustained and continuous investigation, It was learned that accused Irfan Rashid Rather S/O Abdul Rashid Rather R/O Khanpora Dialgam Anantnag is also arrested by Nagrota Police. Thereafter, obtained certified copy of FIR No.364/2021 U/S 8/15/29 NDPS Act of P/S Nagrota, in which Irfan Rashid Rather S/O Abdul Rashid Rather R/O Khanpora Dialgam Anantnag was accused and subsequently arrested and challan against him produced in the court of Hon'ble district Addl. Session Judge Jammu on dated 03/02/2022. I/o obtained FSL Reports from FSL Jammu and as per FSL report which Morphine was detected in the exhibit and these were identified as poppy straw (Plant material of Papaver somniferum). During the course of investigation done so far clearly reveals that, on dated 08/09-09-2021 current owner of truck bearing registration No. JK03C/9848 namely accused Irfan Rasheed Rather S/O Abdul Rasheed Rather R/O Khanpora Dayalgam Distt

Anantnag Kashmir, loaded Poppy straw into his truck cited above with the help of other persons namely namely Arif Ahmed Parray S/o Ghulam Hassan R/o Near Masjid Sharief Mataygund Hillar Shahabad Dooru Anantnag and co-driver Shabbir Ahmed S/o Habib Ullah R/o Mataygund Changoo Doru Anantnag and handed over the truck loaded with 595KGs of Poppy Straw to accused persons namely Arif Ahmed Parray and co-driver Shabbir Ahmed to transport the illegal contraband to Punjab. Subsequently accused persons namely Arif Ahmed Parray S/o Ghulam Hassan R/o Near Masjid Sharief Mataygund Hillar Shahabad Dooru Anantnag and co-driver Shabbir Ahmed S/o Habib Ullah R/o Mataygund Changoo Doru Anantnag reached at Mansar on dated 12-09-2021 and apprehended along with 595 KGs Poppy straw at Naka Mansar while checking by police party. During that particular day as well Arif and Irfan the accused persons were in constant touch with each other on Mobile phone. Thereafter IO obtained the custody of accused person namely Irfan Rashid Rather S/O Abdul Rashid Rather R/O Khanpora Dialgam Anantnag Kahmir as per the order of Hon'ble Court. According to the Site Plan, seizure memo of poppy straw, seizure memo of Truck bearing registration No. JK03C/9848, statement of witnesses U/S 161 CrPC, CDRs, Tower locations, FSL Report and circumstantial evidences disclose the commission of offences punishable U/S 8/15/29 NDPS Act on the part of below mentioned accused persons namely 1 Arif Ahmed Parray S/o Ghulam Hassan R/o Near Masjid Sharief Mataygund Hillar Shahabad Dooru Anantnag 2 Shabbir Ahmed S/o Habib Ullah R/o Mataygund Changoo Doru Anantnag 8/15/29 NDPS Act and 3 Irfan Rasheed

*Rather S/O Abdul Rashid Rather R/O Khanpora
DialgamTeh. &Distt. Anantnag Kashmir 29 NDPS
Act.*

*The challan of the case has been produced in the
Hon'ble Session Court Samba on 03-03-2022".*

4. Before proceeding ahead in the matter, it is needful to reproduce the brief facts of the case, for the sake of convenience.

Truck bearing registration No. JK03C-9848 which was coming from Udhampur towards Samba on 12.09.2021 reached the Naka point Mansar at about 14:30 hours and came to be stopped for checking purposes. During checking of the said truck 26 plastic bags (bohriya) were found in the said truck. That on checking of the said plastic bags poppy straw (Phukie) like substance came to be recovered from inside the same. Incharge Naka point ASI Harnam Singh No. 925977/EXJ prepared a written docket covering the incident and sent the same through Constable Showkat Ahmad No. 585/S of PP Mansar to Police Station, Samba for registration of the case FIR, whereupon the case FIR No. 282/2021 under Sections 8/15, 29 NDPS Act came to be registered against the accused persons i.e. Driver and Conductor respectively named as Arif Ahmad S/o Gh. Hassan R/o Near Masjid Sharif, Mattigund Hillar Anantag and Shabbir Ahmed S/o Habib Ullah R/o Mataygund Changoo Doru Anantnag.

The investigation in the case FIR was entrusted to Inspector Sandeep Singh EXJ-109577 the then I/C PP Mansar. That during investigation, the IO visited the spot and prepared the necessary memos, seized the recovered contraband weighing in total 595 kilograms. The statements of the witnesses of occurrence came to be recorded by the IO. CDR's, CAF and tower locations of the involved mobile numbers came to be obtained along with the certificates under Section 65-B of Indian Evidence Act. That during the course of investigation, the apprehended accused are reported to have made disclosure regarding involvement of present petitioner namely Irfan Rashid Rather S/o Ab. Rashid Rather R/o Iqbal Colony Sheikpora Dialgam, District Anantnag, in the matter, who was also found to have purchased the truck in question last in point of time, on 08.09.2021 from one Showkat Ahmad Yatoo S/o Ali Mohammad Yatoo R/o Dialgam Tehsil Kokernag, District Anantnag at a cost of Rs 11,37,500/- but in the name of some Javed Ahmad. That said Irfan Ahmad, i.e. the present petitioner, was also found to be involved in another case, FIR No. 364/2021 under Sections 8/15, 29 NDPS Act of Police Station Nagrota. That during the course of investigation it was revealed that on 08.09.2021, petitioner being owner of the truck in question loaded poppy straw into his truck with the help of the co-accused, namely Arif Ahmed Parray and co-driver

Shabbir Ahmed, residents of Matigund, Dooroo, Anantnag, and handed over the truck loaded with 595 kilograms of poppy straw to co-accused for being transported to Punjab. That during investigation it was also ascertained that present petitioner and co-accused Arif Ahmed Parry remained in touch on phone even on the date of occurrence. That the investigation was finally concluded in the form of the final report/challan which was presented before the competent court and is presently pending trial.

5. I have heard the learned counsel for the petitioner and the learned state counsel in respect of the matter. The learned counsel for the petitioner Mr. A. R. Khan while reiterating his stand already taken in the bail petition submitted that petitioner has been falsely and frivolously implicated in the case FIR when he is innocent and has not committed the crime as alleged. He submitted that the petitioner stands involved in the case on the mere alleged disclosure of the co-accused which is inadmissible under law.

The learned counsel further submitted that the petitioner has been arrested in the case FIR much after the date of occurrence on the alleged disclosure of the co-accused. He submitted that since the petitioner at the relevant time was the bonafide purchaser of the truck in question, as such, he was supposed to talk on phone with his driver and conductor and such telephonic conversation, if any, cannot be

considered as any supporting evidence of the alleged disclosure

The learned counsel for the petitioner further submitted that the petitioner was earlier also falsely implicated in case FIR 364 of 2021 of Police Station Nagrota, J&K under similar charges, but the learned Trial Court of Principal Sessions Judge, Samba (Special Judge NDPS Act), Jammu granted absolute bail in his favour. That in the said case FIR the petitioner had already been granted interim bail by the Court of learned Additional Sessions Judge Jammu, vide order dated 01.04.2023, which was extended from time to time till the same, was made absolute, as herein before mentioned.

The learned counsel further submitted that the petitioner has been arrested in the case on 18.02.2022, and he has been under detention since last more than three and a half years. That out of the total 23 listed prosecution witnesses, even half of them have not yet been examined at the trial. The learned counsel submitted that the trial of the case is likely to take some more time and to become oppressive against the petitioner with undue delay in completion of the same.

Learned counsel further contended that the bar under Section 37 of the NDPS Act is not attracted so far as the case of the petitioner/accused is concerned because there is no admissible incriminating evidence against him. He contended

that having regard to the bald allegations against the petitioner, there appear reasonable grounds for believing that he is not guilty of the offences charged against him and further that he is not likely to commit any offence while on bail.

Learned counsel further submitted that courts have constantly held that if the prosecution case relies solely on the inadmissible disclosure statement of a co-accused and there is no other incriminating evidence against him, bail should be granted. Learned counsel for the petitioner in support of his contentions placed reliance on the authoritative judgments cited as ***“Indra Dalal Vs. State of Haryana” Supreme Court (2015); Kamal Kishore Vs. State Th. Delhi Administration (1997); Krishna Devi Vs. State of Punjab and Haryana (2021); Labh Singh Vs. State of Haryana (2020)”***.

He contended that the witnesses so far examined have not at all incriminated the petitioner/accused from whose possession nothing has been recovered. The learned counsel in support of his arguments placed reliance on ***Bittu @ Labbal Vs. State of UT Chandigarh Punjab & Haryana (2002); Jagbur Singh Beer @ Saera Singh Vs. State of Haryana Punjab and Haryana (2020)***.

The learned counsel further submitted that it is the admitted case of the prosecution that the co-accused from whose possession contraband is alleged to have been

recovered from the truck were interrogated in the joint interrogation center and not by the Investigating Officer. He further stated that alleged disclosure of the co-accused regarding involvement of the petitioner in the absence of any supporting evidence or ascertainment of new fact is inadmissible under Section 27 of the Indian Evidence Act.

Learned counsel further submitted during his arguments that petitioner is presumed to be innocent till he is proved to be guilty at the conclusion of the trial. He submitted that the provisions under the NDPS Act relating to the presumption are not relevant unless their *prima facie* appear to be making out of foundational facts. He further submitted that the petitioner's fundamental right to life and personal liberty stands deprived on account of his continued incarceration in a case which is without any basis. He submitted that the petitioner/accused is deeply rooted in the society and he is ready to abide by any conditions that may be imposed by this Court while granting the concession of bail in his favour.

6. *Per contra*, the learned State Counsel Sh. Vishal Bharti, learned Dy. AG submitted that the involvement of the petitioner/accused came to be fully ascertained during investigation of the case. He submitted that pursuant to the disclosure of the co-accused regarding his involvement as a co-conspirator, the supporting evidence came to be collected in the form of Call Detail Report (CDR) and the fact of his being the purchaser of the vehicle in question.

He contended that the disclosure of the co-accused is relevant under Section 27 of the India Evidence Act because pursuant to that the petitioner was ascertained to be the purchaser of the vehicle as on the date of the occurrence and besides he was also found to have been in constant conversation with the co-accused right from 09.09.2021 up to the date of occurrence.

7. The learned Dy. AG further submitted that bar under Section 37 is fully attracted in the case of petitioner *as prima facie* ground appears to be made out regarding his involvement in view of the evidence against him. The learned State counsel submitted that trial of the case is smoothly going on and the prosecution witnesses are being regularly examined by the learned Trial Court. He contended that the petitioner accused is facing the charge under heinous and anti-social offences punishable under NDPS Act. He contended that drug addiction has assumed an alarming situation and the new generation has fallen an easy prey to the addiction. The learned counsel further submitted that the petitioner accused under the fear of the punishment provided under the offenses charged against him is likely to misuse the concession of bail if granted in his favour by absconding at the trial and tempering with the prosecution evidence.

8. The learned State counsel further contended that 595 Kgs of poppy straw have been recovered in the case, which falls under the commercial quantity so the bar created under Section 37 is applicable in the present case.

9. The learned State counsel while placing reliance on the authoritative judgments of the Hon'ble Apex Court cited as ***“Union of India Vs. Hareshan Barshi (2007) 7 SCC and Ash Mohammad Vs. Shiv Raj Singh @ Lala BaBu and Anr, JT 2012 (9) SC 155*** submitted that the petitioner/accused does not deserve to be granted the concession of bail as the twin conditions under Section 37 of NDPS Act are not made out. He further submitted that the individual liberty cannot be alleviated to such an extent which would bring anarchy or disorder in the society. The learned State counsel while placing further reliance on ***“Promod Kumar Saxena Vs. Union of India & Ors.” 2008 (68) ACC 115*** submitted that a mere long period of incarceration in jail would not be per se illegal if the accused is alleged to have committed the offence.

10. I have gone through the scanned copy of the trial court record, especially the statements of prosecution witnesses recorded so far at the trial.

11. The learned Trial Court through its order dated 31.08.2024 has rejected the earlier application of the petitioner for grant of bail on the grounds that provisions of Section 37 of the NDPS Act are attracted in the case and besides the petitioner is facing the trial on the charge of offences under NDPS Act in relation to commercial quantity which are heinous in nature and highly anti-social.

12. Keeping in view the perusal of the instant successive bail application, the objections filed in rebuttal by the State,

the scanned copy of the Trial Court record especially the statement of the prosecution witnesses examined at the trial so far and the consideration of rival arguments advanced on both the sides, this Court in light of the law on the subject and while hesitating to make any comment regarding the merits of the case is of the opinion that it may meet the ends of justice in case the petitioner/accused is admitted to interim bail in the case FIR subject to some reasonable terms and conditions.

13. Admittedly, the petitioner/accused came to be involved and arrested in the case FIR on 18.02.2022 pursuant to the alleged disclosure of the co-accused. The petitioner/accused has been in custody in the case FIR since last more than 3 ½ years. The trial in the case is likely to take some more time for its completion. The final report/challan in the case FIR came to be presented before the learned Trial Court on 04.03.2022 and is as such pending trial since last more than 3 ½ years. The petitioner/accused along-with the co-accused came to be formally charged in the case FIR on 27.05.2023. The prosecution up to the date of filing of the instant successive application had recorded only four witnesses i.e. PWs 1 to 4. From the date of the filing of the instant application till this matter was heard, the learned Trial Court is reported to have examined some more witnesses i.e. PWs. No. 5 & 6. There are a total 23 listed prosecution witnesses and as such the completion of the trial is likely to take much time. As per the prosecution case the alleged

disclosure of the co-accused regarding involvement of the petitioner is backed by his being the purchaser of the vehicle at the relevant time as also by his alleged conversations with the co-accused on phone. It is a settled legal position that the criteria for assessing whether in a given case there appear reasonable grounds for believing the *prima facie* involvement of an accused is the nature of the evidence against him.

14. In the backdrop and while hesitating to comment on the merits of the case which obviously shall be subject matter of the final disposal of the trial case, petitioner/accused is admitted to interim bail in the instant case FIR till 28.10.2025 subject to his furnishing of surety and personal bonds to the tune of Rs. 2 lacs each (surety bond of Rs. 2 lacs be furnished by two sureties from amongst the relatives of the petitioner/accused each liable to the extent of Rs. 1 lac); respectively to the satisfaction of the learned Trial Court and the Superintendent of the Jail concerned. This interim bail order shall be however subject to the following conditions:-

- (i) Petitioner/accused shall remain punctual at the trial of the case.
- (ii) Petitioner shall not make any inducement, threat or promise to any of the unexamined prosecution witnesses so as to dissuade them from making their factual statements at the trial.
- (iii) Petitioner shall not leave the limits of UT of J&K without the prior permission of the learned Trial Court.

(iv) Petitioner shall not commit any offence while being on bail.

15. In case the requisite surety bonds are furnished to the satisfaction of learned Trial Court and duly attested, a formal release order shall be issued by the learned Trial Court directing the release of the petitioner/accused in the instant case FIR bearing No. 282/2021 of Police Station, Samba from the place of his lodgment, subject to the petitioner's, furnishing of the personal bond in the amount of Rs. 2 lacs to the satisfaction of the Superintendent of Jail concerned.

16. Registry to send for the scanned copies of the witnesses who will be recorded at the trial till 27.10.2025.

17. Learned Trial Court shall be competent to proceed against the petitioner/accused in the event of violation of any of the bail conditions.

18. List for further consideration on 28.10.2025.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR:

30.09.2025

"Arif"

Whether the order is speaking/reportable Yes