

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

Bail App No. 2/2025 CrIM No. 13/2025

Mohammad Muzaffar Rather and Another ...Petitioner/Appellant(s)
Through: Mr. Parvaiz Lone, Advocate.

Vs.

Union Territory through Police Station Baramulla and ...Respondent(s)
Ors.

Through:

CORAM:

HON'BLE MR JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER

03.01.2025

1. Through the medium of the instant petition filed under and in terms of the provisions of Section 483 (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS for short), the petitioners seek cancellation of bail already granted by the court of learned Judicial Magistrate (Sub-Judge/Special Mobile Magistrate Baramulla) in favour of the private respondents 2 and 3 vide his order dated 11.12.2024 passed on a bail application bearing No. 58/Misc, CNR No.JKBA030011152024 with date of institution as 03.12.2024, in case FIR No. 263/2024 of Police Station Baramulla on the grounds *inter-alia* that the respondents 2 and 3/accused are involved in the commission of heinous offences including offence of attempt to murder as they on the incident day i.e. 13.11.2024 on account of a mutual business rivalry attacked the petitioner No. 1-Mohd Muzaffar Rather with an iron rod rendering him critically injured whereafter he was immediately shifted to the Government Medical College Hospital Baramulla wherefrom he was referred for further treatment to SKIMS Soura as he needed the ventilator support as per the opinion of the attending doctors; that

unfortunately despite the commission of heinous offences by the respondents 2 and 3, the police concerned did not register the FIR in the matter and start investigation, as such, the petitioner no. 2 was forced to approach the court for judicial intervention whereafter the FIR in the matter came to be registered; that the learned Magistrate before the passing of order dated 11.12.2024 admitting the respondents 2 and 3 to bail did not provide adequate opportunity to the petitioners to put forth their protest/objections; that the learned Magistrate observed in breach the guiding principles that have been time and again laid down by the Hon'ble Supreme Court of India and other authoritative High Courts of the Country for consideration of a bail application; that the order dated 11.12.2024 sought to be cancelled has been passed within a week's time and has caused the miscarriage of justice and that the application for bail of the respondents 2 and 3 in the facts and circumstances of the case especially having regard to the seriousness of the crime committed and the initial stage of the investigation, was meriting dismissal.

2. I have heard the learned counsel for the petitioners and considered his submissions.
3. The record of the instant petition especially the order dated 11.12.2024 sought to be cancelled has also been gone through.
4. Perusal of the record reveals that the order dated 11.12.2024 of which the petitioners seem to be aggrieved is an interim bail order which was valid till 19.12.2024. So the order impugned is deemed to have lost its validity prior to the filing of instant petition. However, the learned counsel for the petitioners submitted at the bar that the said order

dated 11.12.2024 was further extended and the respondents 2 and 3 are presently at large on the basis of the interim bail order. The petitioners have not chosen to place on record of the petition any subsequent extension bail orders. However, it is admitted by the learned counsel for the petitioners that the bail petition is yet to be disposed of finally and the respondents 2 and 3 are still on the interim bail.

5. It is evident from the record of the petition that the respondents/accused 2 and 3 are alleged to have committed offences punishable under Sections 126(2), 115(2), 109, 351(2) of the Bharatiya Nyaya Sanhita, 2023 (BNS for short). The offence under Section 109 of BNS provides punishment for attempt to murder which in the facts of the case may extend to imprisonment for life. The copies of the medical records made available on the file reveal that the petitioner No. 1 was critically injured and was admitted in the Government Medical College Baramulla on 13.11.2024 at around 4 pm under MRD No. 474080 as an alleged case of physical assault with trauma to head with multiple episodes of vomiting, ENT bleed. He was found on his immediate examination disoriented in time, person and place. The CT imaging dated 19.11.2024 of the petitioner No.1 reveals Right middle ear cavity totally opacified, Right aditus, antrum and multiple right mastoid air cells opacified and Evidence of longitudinal fracture of the right petrous temporal bone with involvement of the posterior-superior wall of bony external auditory canal. No definite involvement of optic capsule seen.

6. Since the bail application of the respondents 2 and 3 is yet to meet the final disposal as such it is felt appropriate to dispose of the instant petition at this threshold stage with the direction to the learned trial Magistrate to provide adequate opportunity to the petitioners in person and through their counsel to oppose the bail application who are reported to have already filed their protest petition. The learned Magistrate is expected to hear the accused/respondents 2 and 3 and the prosecution also by providing them adequate opportunity.
7. The learned Magistrate shall keep in mind that as per the law on the “subject of bail” in case of non-bailable offences no single rule or golden litmus test is applicable for consideration of a bail application and instead some guiding principles are needed to be kept in mind by the Courts and the Magistrates for consideration of such applications especially including: -
- i. The judicial discretion must be exercised with the utmost care and circumspection;
 - ii. Nature and gravity of the charge;
 - iii. That the Court must duly consider the nature and the circumstances of the case;
 - iv. Reasonable apprehension of the witnesses being tampered;
 - v. Investigation being hampered or
 - vi. The judicial process being impeded or subverted.
 - vii. The liberty of an individual must be balanced against the larger interests of the society and the State.
 - viii. The court must weigh in the judicial scales, pros and cons varying from case to case.
 - ix. Grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the rule;
 - x. The court at this stage is not conducting a preliminary trial but only seeking whether there is a case to go for trial;
 - xi. The nature of the charge is the vital factor, the nature of evidence is also pertinent, the punishment to which the party may be liable also bears upon the matter and the

likelihood of the applicant interfering with the witnesses or otherwise polluting the course or justice, has also a bearing on the matter.

xii. The facts and circumstances of the case play a predominant role.

8. In case, the Courts and Magistrates chose to exercise their discretion by enlarging the accused on bail in all the cases, escaping the statutory bars, simply after completing the formality of filing of objections by the prosecution and without keeping in mind the cumulative effect of the variety of circumstances/guiding principles laid down by the Hon'ble Apex Court and the various other authoritative High Courts including this court, the likelihood and apprehension of insecurity in a society cannot be ruled out. Although the object of the criminal law is to punish the offender upon being found guilty at the trial but the real object is the protection and safeguard of the society in general. Accordingly without touching the merits of the case, the instant petition is disposed of with a direction to the learned Magistrate to dispose of the main application after hearing all the parties including the complainant, making perusal of the Case Diary file concerned and especially keeping in view the guiding principles that are being laid down by the Hon'ble Apex Court from time to time for consideration of a bail application.

9. A copy of this order shall be forwarded to the learned Magistrate for compliance.

10. Application disposed of.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR

03.01.2025

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