

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Bail App No. 33/2025

Reserved On: 8th of April, 2025.
Pronounced On: 26th of May, 2025.

Jameel Ahmad Mir

... Petitioner(s)

Through: -

Mr. S. T. Hussain, Senior Advocate with
Ms. Nida Nazir, Advocate.

V/s

Union Territory of J&K and Anr.

... Respondent(s)

Through: -

Mr. Bikramdeep Singh, Dy. AG with
Ms. Nowbahar Khan, Assisting Counsel.

CORAM:

Hon'ble Mr Justice Rahul Bharti, Judge

(JUDGMENT)

01. Heard Mr. S. T. Hussain, learned Sr. Advocate assisted by Ms. Nida Nazir, Advocate.

02. The petitioner-Jameel Ahmad Mir, acting through his father-Mushtaq Ahmad Mir, has come forward invoking jurisdiction of this Court in terms of Section 439 of the Code of Criminal Procedure (Cr. P. C.), 1973 for the sake of earning bail not on merit based cause related to the case but bearing an exceptional situation related to the petitioner having suffered burn

injuries in the course of his under-trial custody in the District Jail, Kupwara. Thus, the involvement of checks envisaged in the matter of grant of bail in terms of section 37 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 are ruled out, although the petitioner is booked and being prosecuted in a criminal case involving commission of offences under section 8/21 & 29 of the NDPS Act, 1985.

03. Section 439 of the Code of Criminal Procedure (Cr. P. C.), 1973 is a special power of the High Court as well as that of the Court of Session in the matter of granting bail in cases involving non-bailable offence/s.

04. The petitioner is an under-trial in terms of FIR No. 09/2024 dated 14th of February, 2024 registered by the Police Station, Karnah for alleged commission of offences punishable under Sections 8/21 and 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

05. The trial of the petitioner in terms of final police report No. 09/2024 of June, 2024 is under-going in the Court of learned Additional Sessions Judge (Fast Track Cases), Kupwara. The petitioner is one of the three accused persons.

06. At the time of his implication in the said criminal case related to FIR No. 09/2024, the petitioner was posted in 160 INF

BN TA (H and H) GAK Rifles Indian Territorial Army deployed in CI/CT, Kupwara.

07. On 19th of June, 2024, an incident of LPG cylinder burst is said to have taken place in the jail premises of District Jail, Kupwara which is said to have resulted in fatal and grievous injuries on many persons including the under-trials and other inmates. The petitioner is one of the persons seriously burnt and grievously injured in terms of the said incident which is said to have left him 60-90% of body surface burns.

08. The aforesaid incident obviously resulted in hospitalization of all those injured and also of those who came to be reported dead for medical treatment and the petitioner is one of the said injured persons so hospitalized being in state of custody as an under-trial.

09. The petitioner came to approach the trial Court of Additional Sessions Judge (Fast Track Cases), Kupwara for grant of bail on medical grounds but the Court of Additional Sessions Judge (Fast Track Cases), Kupwara, instead of granting bail in favour of the petitioner so as to let the petitioner and his family members nurse and attend upon the ailing petitioner at their own expense and energy, directed the Superintendent, District Jail, Kupwara to transfer the petitioner to 92 Base Hospital, Srinagar

for resumption of his specialized treatment for 60% TBSA burns and PTST pending further orders on the bail application moved by the petitioner and also allowing one of the family members of the petitioner to remain as an attendant with the petitioner during his hospitalization at 92 Base Hospital, Srinagar. The petitioner was directed not to leave the jurisdiction of the court without prior permission and also to report his treatment progress to Station House Officer (SHO), Police Station, Karnah every 15 days.

10. It is obvious that the petitioner was not granted bail on medical grounds except indulgence in the matter of his hospitalization in the 92 Base Hospital, Srinagar.

11. Along with the present petition, the petitioner has annexed a report of Medical Officer, 92 Base Hospital, Srinagar which bears clinical assessment of the petitioner and the same is reproduced as it is hereunder so as to self-speak the physical status of the petitioner relatable to his burn injuries:

“Relevant History: The individual was functioning well in his socio-occupational domain until June, 2024, when he was detained at a Police Station in Kupwara following an alleged altercation with the J&K Police on 19th June, 2024 at around 16:30 hours, a gas cylinder exploded, causing a massive fire in the detention area where he and 7-8 others were confined. The individual recalls fragmented details, describing himself as being engulfed in flames, struggling to breathe due to heavy smoke and soot, and feeling his body burning. He was the last to escape the fire and

emerged with burns and temporary loss of vision. Two detainees died at the scene, while he and the others were rushed to a nearby hospital. After initial stabilization, he was shifted to 92 Base Hospital on 29th June, 2024 and later referred to RR Hospital for further management, where he stayed for 1-1.5 months. During this time, he witnessed the death of a fellow survivor three days after admission, an event that deeply affected him. Shortly after hospitalization, he began experiencing nightmares about being trapped in the fire, waking up drenched in sweat and gasping for breath. These nightmares initially occurred sporadically but soon became recurrent, happening 3-4 times a week, leaving him exhausted and fearful of sleeping. He also started having flashbacks, vividly re-experiencing the fire incident when exposed to triggers like loud noises (e.g., bursting balloons, firecrackers) or the sight of flames. These episodes made him feel as though he was back in the burning room, leading to severe anxiety, trembling, sweating and inability to focus on his surroundings. Over time, he developed avoidance behaviors, refusing to enter kitchens, enclosed spaces, or any area where fire was present. He also avoided conversations or thoughts about the incident to prevent distress. He started to fear holding even a glass of hot water, as it would remind him of the burns and the traumatic event. He began exhibiting hyper-arousal symptoms, such as being easily startled by sudden noises like door slams or loud voices. He described feeling constantly on edge, scanning his environment for danger even in safe settings. Additionally, he reported persistent feelings of guilt, often thinking “I should have died instead of them” and blaming himself for surviving when others did not. Seeing the scars from his burns exacerbated this guilt, as they would constantly remind him of the trauma and make him feel unworthy of surviving. His mood became progressively low, marked by emotional numbness and detachment from family and colleagues, describing himself as feeling “empty inside”. He lost interest in previously enjoyed activities, citing an inability to find joy or satisfaction in anything. He also experienced cognitive difficulties, such as impaired concentration and memory lapses, affecting his ability to perform

routine tasks effectively. As the symptoms progressively worsened over the subsequent months, they began to significantly impair his daily functioning, inter-personal relationships and overall quality of life. Eventually, he approached the RMO of his unit and was referred for psychiatric evaluation.”

12. In terms of an order dated 08.04.2025 this Court came to be posted with medical report furnished by the Medical Officer, District Jail Kupwara confirming the fact about the state of burnt injuries of the petitioner and its effect on the mental and physical health of the petitioner which is self stating the way as to how the petitioner has suffered and is suffering traumatic effects of the incident.

13. Bearing in mind the aforesaid relevant history of the petitioner as drawn out from the medical record of the petitioner relatable to trauma of getting burnt in fire there is no iota of doubt that this is a fit case where the grant of bail in favour of the petitioner ought to have come at the very first instance the moment it was asked for from the court below. In fact, even the Prosecution should have volunteered an admission and accommodation that given the critical condition in which the petitioner was and is, as a burnt person, he deserves to be on medical bail though of course without compromising with the progress of the criminal case proceedings.

14. In the light of the aforesaid facts and circumstances of the case, this Court is inclined to grant indulgence in the matter by ordering the petitioner to be enlarged on bail for a period of six months with effect from the date of his release from judicial custody from the District Jail, Kupwara by the Superintendent, District Jail, Kupwara for enabling the petitioner not only to have medical treatment and care of his own choice or that of family members' choice but also to have the homely care and nursing of his own family members available to him 24x7 considering the fact that the petitioner is an unmarried 29 years' old person having suffered an irreversible damage to his physical being not by any act of omission or commission on his part but for an accident taking place at the premises of the District Jail, Kupwara for which the accountability is yet to be figured out and fastened upon.

15. The petitioner is, accordingly, hereby granted bail for a period of six months with effect from the date of his release on the following terms and conditions:

- i. In case the petitioner is not able to attend in person the dates of proceedings in the criminal case before the court below, then the petitioner to appear through his counsel without miss so that the criminal case does not suffer adjournment because of non-appearance of the

petitioner's counsel and the petitioner not to contest the testimony of prosecution witness with respect to his (petitioner's) identify being referred to by prosecution witness in his absence;

- ii. In case the petitioner being advised specialized medical treatment outside the Union Territory of Jammu & Kashmir, then the petitioner to approach the trial Court with an application for seeking permission to leave outside the Union Territory of Jammu & Kashmir for his medical treatment and which application upon being filed, the trial court to accord due consideration to it without unwarranted time loss;
- iii. The petitioner to furnish bond, bail as well as surety, of Rs. 2.00 lac each for securing his attendance, be it in person or through his counsel, in the ongoing criminal case;
- iv. Personal bond to be furnished to the Superintendent, District Jail, Kupwara. In case, the petitioner is not able to subscribe his signatures or even affix his thumb impression, then the Superintendent, District Jail, Kupwara to get the personal bond signed by the father of the petitioner in presence of the petitioner as well as in his (Superintendent, District Jail, Kupwara's) presence so as to be counted as a bond executed by the petitioner;
- v. The petitioner's personal bond then to be forward by the Superintendent, District Jail, Kupwara to the Court of Additional Sessions Judge (Fast Track Cases), Kupwara;
- vi. Surety bond to be submitted by the surety to the Court of Additional Sessions Judge (Fast Track Cases), Kupwara; and

- vii. Upon expiry of six months from the date of release of the petitioner from District Jail, Kupwara, the petitioner to report himself in person before the trial court of Additional Sessions Judge (Fast Track Cases), Kupwara and, if medical advice would reckon to be in favour of the petitioner for his further medical treatment, then extension of bail to be secured by the petitioner by approaching this Court on or before expiry of six months of bail period.

16. Bail Application is, thus, **disposed** of on the aforementioned terms.

17. Copy of this order to be forwarded by the Registrar Judicial, Srinagar to the court of Additional Sessions Judge (Fast Track Cases), Kupwara for notice and to be taken on the record of the case.

(Rahul Bharti)
Judge

SRINAGAR
May 26th, 2025
"TAHIR".