

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Virtual Mode)
BAIL APP 54/2025**

DANISH MOHIUDDIN GANAI

...Petitioner/Appellant(s)

Through: Mr. Arshad Andrabi, Advocate

Vs.

**UNION TERRITORY OF J AND K AND
ORS.**

...Respondent(s)

Through: Mr. Furqan Yaqoob, GA

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER
27.10.2025

1. The petitioner through the medium of the instant successive bail petition filed before the Registry on 21-04-2025, obviously in terms of the Provisions of Section 439 of the Code of Criminal Procedure, 1973 (repealed but invocable in respect of the matters pending as on date of enforcement of the New Sanhita, 2023 i.e., BNSS and hereinafter referred to as the "Code" for short), corresponding to the provisions of Section 483 of BNSS, seeks his enlargement in case FIR No. 221/2022 of Police Station, Awantipora registered under Sections 18, 18-B, 20, 23 and 39 ULA (P) Act and 201 IPC, the investigation in which case FIR has already culminated with the

filing of a final report/challan reported to be pending trial before the Court of learned designated Judge under NIA Act, Pulwama (hereinafter referred to as the “Trial Court” for short).

2. The Court after feeling confronted with the issue as to whether in the backdrop of the Provisions of Section 21 of the National Investigation Agency Act, 2008, (hereinafter referred to as ‘NIA’ Act), a Single Bench of this Court can hear the instant petition in terms of the Provisions of Section 439 of the Code, directed the learned counsel for the parties for advancement of their arguments in support of/opposition to the issue.
3. I have accordingly heard the learned counsel for the parties in respect of the issue.
4. The learned counsel for the petitioner, Mr. Arshad Andrabi, Advocate, submitted that Section 21 of the NIA Act does not at all bar the filing of a successive petition before this Court in terms of the Provisions of Section 438 of the Code corresponding to Section 483 of BNSS. The learned counsel submitted that as per the Provisions of Section 21 of the NIA Act, an appeal shall lie from any judgment, sentence or order not being an interlocutory of a Special Court to this Court both on facts and on law, which appeal shall be heard by a Bench of two judges of this Court. He submitted that it is clear from the Provisions of the Section 21 of the NIA Act that a successive bail petition in terms of the

Provisions of Section 439 of the Code is not at all barred. He submitted that he is not preferring an appeal against the order dated 19-03-2025 passed by the learned Trial Court while dismissing the earlier bail petition filed on behalf of the petitioner/accused.

5. The learned counsel submitted that Provisions of Section 439 of the Code vest extraordinary powers in this Court for exercising its discretion in respect of grant of bail to an accused who has been denied such concession in disregard to his fundamental rights to life and liberty guaranteed under Article 21 of the Constitution of India. He submitted that the petitioner/accused has been falsely and frivolously implicated in the case FIR and there is no supporting evidence even collected during investigation of the case in relation to the offences alleged against him. He submitted that bar in terms of Section 43 (D) of the ULA (P) Act is not attracted at all in the facts and circumstances of the case as the allegations against the petitioner are balled and without any substance. He submitted that it is a settled legal position that an accused person is presumed to be innocent till he is proved guilty at the trial and as such the grant of bail should be the rule and its denial an exception.
6. He submitted that a statutory remedy available to the petitioner in terms of Section 439 of the Code cannot be denied to him on the

pretext of the Provisions of Section 21 of the NIA Act, which Provisions do not at all bar the filing of a subsequent petition under Section 439 of the Code. The learned counsel in support of his arguments placed reliance on the judgements cited as ***“Gudikantt Narasimhulu vs. Public Prosecutor, High Court of A.P.” 1978 AIR (SC) 429***, decided on 06-12-1977, ***“Gurcharan Singh and Ors. vs. State (Delhi Administration)” AIR SUPREME COURT 179***, decided on 06-12-1977, ***“Ruldu Singh vs. State of Rajasthan” 1996 (1) WLN 132*** decided on 11-04-1996, ***“Subhendu Mishra vs. Subrat Kumar Mishra and another” 1999 AIR (SC) 3026*** decided on 22-02-1999, ***“Dinesh Yadav vs. State” 2002 CrLJ 1067***, decided on 25-07-2001, ***“T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi vs. State through Secretary and another” 2006 AIOL 2008***, decided on 16-02-2006, ***“Redaul Hussain Khan vs National Investigation Agency” 2010 (1) SCC 521***, decided on 19-11-2009, ***“State of Andhra Pradesh vs. S. Swarnalatha & Ors.” 2009 AIOL 5091***, decided on 04-08-2009, ***“Sanjay Chandra vs CBI” 2011 AIOL 823***, decided on 23-11-2011, ***“State of Kerala vs. Dr. Raneef” 2011 CrLJ 982***, decided on 03-01-2011, ***“Sundeeep Kumar Bafna vs. State of Maharashtra & Anr.” 2014 AIOL 181***, decided on 27-03-2014, ***“Munir Hussain and Ors. vs. State and Ors.” 2015 (2) JKKJ 743***, decided on 13-03-2015,

“Gokarakonda Naga Saibaba vs. State of Maharashtra and Ors.” 2016 (1) Crimes 62, decided on 23-12-2015, ***“Aadil Ansari vs. The State of Rajasthan”*** decided on 16-04-2019, ***“State of Maharashtra vs. Surendra Pundlik Gadling and Ors.” 2019 AIR (SC) 975***, decided on 13-02-2019, ***“Bikramjit Singh vs. The State of Punjab”*** decided on 12-10-2020, ***“State of NCT of Delhi vs. Devangana Kalita”*** decided on 15-06-2021, ***“Satender Kumar Antil vs. Central Bureau of Investigation and Anr.” 2023 Legal Eagle (SC) 232***, decided on 23-03-2023, ***“Mahatab Ali vs The State of West Bengal and Anr.”*** decided on 27-01-2025, ***“Abdul Rab vs. Narcotics Control Bureau”*** decided on 20-01-2025 and ***“Anna Waman Bhalerao vs. State of Maharashtra” 2025 INSC 1114***, decided on 12-09-2025.

7. *Per contra*, the learned counsel for the respondents, Mr. Furqan Yaqub, GA, submitted that an in-depth and logical understanding and interpretation of the Provisions of Section 21 of the NIA Act makes it abundantly clear that an order of rejection of bail by a Special Court constituted under NIA Act can only be assailed through the medium of an appeal before the High Court which shall be heard by a Bench of two judges.
8. The learned GA in support of his contentions placed reliance on the authoritative judgment of the Hon’ble Supreme Court of India titled ***“State of Andhra Pradesh vs. Md. Hussain @ Saleem”***

clubbed with “Sadhwi Pragya Singh Thakur vs. National Investigation Agency” AIR (SC) Cri 2255, decided on 13-09-2013.

9. The learned GA also submitted by furnishing a copy of the order dated 08-09-2025 passed by a learned Division Bench of this Court in Bail App No. 06/2025 titled ***“Imran Ahmad Mir vs. Union Territory of J&K and Ors.”*** that the learned counsel for the petitioner/accused in the said case after arguing for some time sought the withdrawal of the bail application which he had filed before a learned Division Bench involving offences under ULA (P) Act with liberty to file an appeal in terms of the NIA Act. The learned counsel submitted that the petitioner/accused in the said case had filed an application before the learned Division Bench which, in response to the queries of the Court regarding maintainability of the same was sought to be withdrawn with liberty to file the appeal in terms of the Provisions of Section 21 of the NIA Act.
10. I have considered the rival submissions of the learned counsel for the parties.
11. This Court is of the considered opinion that in the light of the Provision of Section 21 of the NIA Act, a successive application in terms of the Provisions of Section 438 of the Code corresponding to Section 483 of BNSS, shall not lie even before

the Division Bench of a High Court. The remedy in such a situation lies in filing an appeal assailing the order of rejection of the Special Court before the Division Bench of a High Court.

12. An in-depth and logical interpretation of the Provisions of Section 21 of the NIA Act makes it abundantly clear and explicit that any judgment, sentence or order not being an interlocutory order of a Special Court constituted in terms of Sections 11 or 22 of the NIA Act can be assailed only through the medium of an appeal before the Division Bench of a High Court.

The Section 21 of the NIA Act starts with a ‘non-obstante clause’ thus making it clear that the Provisions of the Section have an overriding effect on the Provisions of the Code of Criminal Procedure, 1973 and on the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. The Provisions of Section 21 of the NIA Act clearly reveal that notwithstanding anything contained in the Code which is to be read as also BNSS, an appeal shall lie from any judgment, sentence or **Order** not being an interlocutory order of a Special Court to the High Court, both on facts and on law and which appeal shall be heard by a Bench of two judges of the said Court. Clause 4 of the Section 21 of NIA Act also starts with a ‘non-obstante’ phrase by laying down that notwithstanding anything contained in Sub-Section (3) of Section

378 of the Code, an appeal shall lie to the High Court against an order of Special Court granting or refusing bail.

It is felt appropriate to reproduce the Provisions of Section 21 of the NIA Act for the sake of convenience:-

“ 21. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

**Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days
Provided further that no appeal shall be entertained after the expiry of period of ninety days”.**

There appears to have been left no scope at all for filing a subsequent application in terms of Section 438 of the Code corresponding to Section 483 of BNSS before a Single Bench of the High Court, upon being aggrieved by an order passed by the Special Court while granting or refusing bail.

13. This Court feels fully supplemented with the authoritative judgement of the Hon'ble Supreme Court of India cited as ***“State of Andhra Pradesh vs. Md. Hussain @ Saleem”*** clubbed with ***“Sadhwi Pragya Singh Thakur vs. National Investigation Agency”*** AIR (SC) Cri 2255, decided on 13-09-2013, also relied upon by the learned counsel for the respondents. The relevant paras 14 to 17 whereof deserve a needful mention as under:-

“14. Section 21(2) provides that every such appeal under sub-Section (1) shall be heard by a bench of two Judges of the High Court. This is because of the importance that is given by the Parliament to the prosecution concerning the Scheduled Offences. They are serious offences affecting the sovereignty and security of the State amongst other offences, for the investigation of which this Special Act has been passed. If the Parliament in its wisdom has desired that such appeals shall be heard only by a bench of two Judges of the High Court, this Court cannot detract from the intention of the Parliament. Therefore, the interpretation placed by Mr. Ram Jethmalani on Section 21(1) that all interlocutory orders are excluded from Section 21(1) cannot be accepted. If such an interpretation is accepted it will mean that there will be no appeal against an order granting or refusing bail. On the other hand, sub-Section (4) has made that specific provision, though sub-Section (1) otherwise excludes appeals from interlocutory orders. These appeals under sub-Section (1) are to be heard by a bench of two Judges as provided under sub-Section (2). This being the position, there is no merit in the submission canvassed on behalf of the appellant that appeals against the orders granting or refusing bail need not be heard by a bench of two Judges.

15. We cannot ignore that it is a well settled canon of interpretation that when it comes to construction of a section, it is to be read in its entirety, and its sub-sections are to be read in relation to each other, and not disjunctively. Besides, the text of a section has to be read in the context of the statute. A few sub-sections of a section

cannot be separated from other sub-sections, and read to convey something altogether different from the theme underlying the entire section. That is how a section is required to be read purposively and meaningfully.

16. (i) As noted earlier, the submission of the applicant is two-fold. Firstly, as stated above the appeal against an order granting or refusing bail under Section 21(4) of the Act need not be before a bench of two Judges, which is untenable as noted above.

(ii) The other submission is that the application for bail which is made by the applicant before the High Court is an original application under Section 21(4) of the MCOC Act read with Section 439 of the Code, and is therefore, maintainable before a Single Judge of the High Court. As far as this submission is concerned, it has been repelled in the judgment of Usmanbhai (supra) relied upon by the counsel of the applicant himself. That was a matter under Terrorist and Disruptive Activities (Prevention) Act (28 of 1987) shortly known as TADA. This Act also had a similar provision in Section 19(1) thereof which read as follows:-

“19 (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Designated Court.”

It is also material to note that Section 20(8) of TADA had provisions identical to Section 21(4) of MCOC Act. The Gujarat High Court while interpreting the provisions of TADA had held that it did not have the jurisdiction to entertain the application for bail either under Section 439 or under Section 482 of the Code. That view was confirmed by this Court by specifically stating at the end of para 22 of its judgment in Usmanbhai's case (supra) in following words:-

“We must accordingly uphold the view expressed by the High Court that it had no jurisdiction to entertain an application for bail under S. 439 or under S. 482 of the Code.”

17. The view taken by this Court in Usmanbhai was reiterated in State of Punjab v. Kewal Singh and Anr. reported in 1990 (Supp) SCC 147. That was also a matter under TADA, and the application for bail by the respondents was rejected by the designated court. Thereupon they had moved the High Court under Section 439 of Cr.P.C. for grant of bail, and a learned single Judge of Punjab & Haryana High

Court had enlarged them on bail on the ground that the co-accused had been granted bail. The order in this matter is also passed by a bench presided over by A.P. Sen, J. This Court set aside the order passed by the High Court and clearly observed in paragraph 2 as follows :-

“2. ...“We are of the view that the High Court had no jurisdiction to entertain an application for bail under Section 439 of the Code. See *Usmanbhai Dawoodbhai Memon V. State of Gujarat*....”

Thereafter, the Court observed in paragraph 3:-

“3. We however wish to make it clear that the respondents may move the Designated Court for grant of bail afresh. The Designated Court shall deal with such application for bail, if filed, in the light of the principles laid down by this Court in *Usmanbhai Dawoodbhai case*.”

This Court has already expressed a similar view in “*Ghulam Jeelani Gattoo vs. State of J&K*” (2018) 4 JKJ 146, decided on 31-07-2018. It is profitable to reproduce the relevant paras 14 to 16 of the said judgment for ready reference:-

“14. From a bare glimpse of the law laid down above, an order of the rejection of the bail passed by the Special Court under the NIA Act of 2008, is appealable and the appeal shall lie before a Bench of two Judges of the High Court. Section 21, Sub Section (2) of the Act, provides that every appeal under Sub Section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal and Sub Section (4) of the Act, provides that notwithstanding anything contained in Sub Section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail. On the analogy of Section 21 of the Act, the order passed by the Special Court in the application

for bail has to be appealed against and the appeal shall lie before the Division Bench and not before the Single Judge of the High Court. The argument that this case has not been taken over for the rigor of Section 21 of the Act shall not apply to the same is a fallacious one for the simple reason that a Scheduled offence can be investigated into and tried by the State Government also and the forum that shall hear and determine an appeal against the order of the rejection of the bail is provided under Section 21 of the Act.

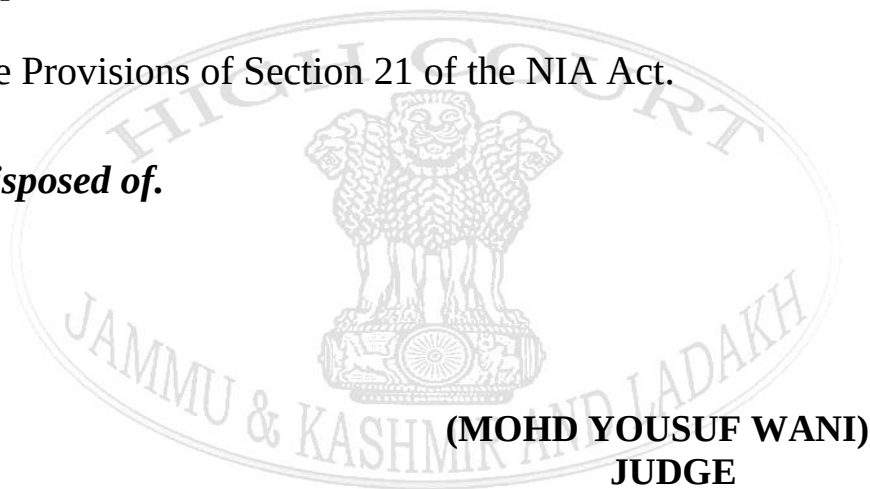
15. In view of the preceding analysis, this Court lacks the jurisdiction to decide and determine the application of the applicant, as a sequel to which, the same is dismissed.”

16. The order cited above details that a Single Bench of the High Court does not have the jurisdiction to decide and determine an application for grant of bail, wherein the provisions of Unlawful Activities are invoked and the Special Court has passed an order in the application. The order holds that such an order can be appealed against before a Division Bench, as a corollary to which, this application is dismissed with the liberty to the applicant to work out his remedy before the proper forum”.

14. The case law referred to by the learned counsel for the petitioner/accused does not seem to be relevant in the context of the issue being adjudicated through this order, i.e., the admissibility of an application for bail in terms of Section 439 of the Code involving offences under ULA (P) Act, before a Single Bench of this Court in view of the Provisions of Section 21 of NIA Act.

15. In the backdrop, the instant bail petition is dismissed as not maintainable before this Court. It is, however, needful to mention that since the order rejecting the bail of the petitioner has been passed by the learned Special Court conducting the trial of the case on 19-03-2025, as such, further evidence is believed to have been recorded at the trial. The petitioner accused is at liberty either to move the learned Trial Court with a successive bail application upon change in circumstances, if any, or to prefer an appeal before a Division Bench of this Court in accordance with the Provisions of Section 21 of the NIA Act.

16. ***Disposed of.***



JAMMU:
27.10.2025
Akshil Dev

Whether the order is speaking/reportable Yes