

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

Reserved on: 02.09.2025
Pronounced on: 30.09.2025

Bail App No. 112/2025

Sheikh Athar Bashir and Anr.

...Appellant(s)

Through: Mr. Syed Riyaz Hussain, Advocate with
Mr. Abid Shah, Advocate.

Vs.

Union Territory of J & K & Ors.

...Respondent(s)

Through: Mr. Mohsin Qadri, Sr. AAG.

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGMENT

1. Through the medium of the instant successive application filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS' for short), bail on behalf of the Petitioners has been sought on the grounds, *inter alia*, that they are innocent and were falsely and frivolously implicated in FIR No. 88/2024 at Police Station Parimpura under Sections 306 and 34 IPC; that they are law-abiding citizens having no criminal record; that Petitioner No. 1 is a young student, aged 23 years; when the Petitioner Number 2 is an aged homemaker, deeply rooted in society; that they are alleged to have abetted the commission of suicide by the deceased Bashir Ahmed Sheikh, who was none but the father of Petitioner No. 1 and the husband of Petitioner No. 2; that about eight months after the incident, the sisters of the deceased filed a false complaint before the Court of Learned Forest Magistrate, Srinagar, alleging that the deceased was subjected to harassment by the Petitioners and other co-accused, which allegedly drove him to commit suicide; that FIR against the Petitioners and co-accused came to be registered pursuant to the direction of the said

Magistrate, passed on an application filed under the provisions of Section 156(3) Cr.P.C; that the Petitioners were arrested respectively on 22nd August 2024 and 23rd August 2024; that thereafter, a bail application was initially filed on their behalf before the Court of Learned 2nd Additional Munsiff Judicial Magistrate, Srinagar, on 24th August 2024, which was dismissed vide order dated 04.09.2024, primarily on the ground that the investigation was still in progress and the release of the Petitioners may prejudice the same; that the subsequent bail application filed before the Learned Principal Sessions Judge, Srinagar, on 6th September 2024, also met the same fate, and was rejected vide order dated 11th October 2024 on almost identical grounds; that both the learned courts, while rejecting the bail applications, erred by ignoring the fundamental right to life and personal liberty of the petitioners guaranteed under Article 21 of the Constitution of India; the courts below failed to appreciate that pre-trial incarceration, in the absence of substantial material, amounts to punishment without trial; that during investigation, no recovery whatsoever has been affected from the Petitioners nor has any suicide note, eyewitness, or direct evidence of conspiracy or active involvement been brought on record which could legally constitute “abetment to suicide” within the meaning of Section 306 IPC; that, after culmination of the investigation, the charge-sheet (Challan) came to be presented and is presently pending trial before the Learned 3rd Additional Sessions Judge, Srinagar, where charges under Sections 306 and 120-B IPC were framed against them and co-accused, to which they pleaded not guilty, and thereafter the prosecution evidence was called by the learned trial court which is underway; that they also moved a bail application before the Learned Trial Court, which was

dismissed vide order dated 24th May 2025 on the ground of seriousness and gravity of the charges, without appreciating that the complainants, being sisters of the deceased, have a long-standing property dispute with the family of the deceased which prompted them to falsely implicate the Petitioners; that they have been in custody for more than one year and the case is at an advanced stage of trial; that they are similarly situated when the other co-accused have already been enlarged on bail; that the entire prosecution case rests merely on conjectures and strained family relations arising out of a property dispute; that the investigation did not reveal any direct act, overt act, or omission by the Petitioners having proximity with the alleged occurrence; that mere allegations of strained family relationship or monetary demand do not *per se* constitute the offence of abetment; that it is a settled principle that an accused is presumed innocent until proved guilty and denial of bail amounts to pre-trial conviction and that the Petitioners are ready and willing to abide by any condition which this Court may impose while admitting them to bail.

2. That the respondent-Police Station opposed the bail petition on the grounds that the Petitioners, along with other co-accused, are facing trial for offences under Sections 306 and 120-B IPC, and that during investigation the IO collected sufficient material in support of the charges; that the Petitioners, who happen to be the son and wife of the deceased, allegedly hatched a conspiracy with the co-accused and instigated the deceased to take the extreme step of ending his life by consuming a poisonous substance; that there is material collected during investigation to the effect that the Petitioners and other family members of the deceased continuously harassed and tortured him, compelling him to consume the said substance on the fateful day; that, having regard to the seriousness of

the charges, there exists a reasonable apprehension of the Petitioners misusing the concession of bail by absconding during trial; that the offences alleged against the Petitioners are highly anti-social in nature, and their release is likely to send a shockwave to society and encourage like-minded persons; that the liberty of the Petitioners stands curtailed strictly in accordance with the procedure established by law; that the rejection of the bail application does not amount to pre-trial conviction as alleged; and that the Hon'ble Apex Court has laid down guiding principles for consideration of bail applications, the cumulative effect of which does not justify grant of bail to the accused persons who are alleged to have committed offences of a serious and anti-social character.

3. Before proceeding ahead towards disposal of this application, it is felt appropriate to give a brief resume of the prosecution case;

Police Station Parimpura, on 1st November 2023, received information from reliable sources to the effect that one Bashir Ahmed Sheikh (deceased), resident of Rose Avenue Colony, HMT, Srinagar, fell unconscious at his home and was taken to SKIMS Hospital by his relatives, where he was declared dead. There were rumours regarding the cause of his death, suggesting abetment to suicide by his family members. The information was entered in the daily diary and proceedings under Section 174 Cr.P.C. were initiated through P.W. No. 11. During the said proceedings, the Enquiry Officer visited the spot, prepared the necessary memos, recorded the statements of witnesses, and took the dead body into custody. After completion of formalities, including conduct of post-mortem, the body was handed over to the family for last rites. Meanwhile, during the course of inquiry, the sisters of the deceased approached the Learned Forest Magistrate, Srinagar, seeking directions for registration of FIR and taking up of investigation in respect of the matter. The Learned

Magistrate, vide order dated 3rd August 2024, directed registration of FIR and initiation of investigation in the matter. Accordingly, FIR No.88/2024 under Section 306 IPC came to be registered at Police Station Parimpura on 9th August 2024. During investigation, the earlier inquest proceedings under Section 174 Cr.P.C. were seized by the Investigating Officer, who recorded statements of witnesses and completed other formalities. The investigation culminated in the presentation of a final charge-sheet (Challan) against the Petitioners and other co-accused (already on bail). The case is presently pending before the Court of the Learned 3rd Additional Sessions Judge, Srinagar. The Petitioners and co-accused stand already charged by the learned trial court under Sections 306 and 120-B IPC, who have pleaded not guilty to the charge, and, as such, the prosecution evidence, upon being called, is presently underway, and some of the witnesses, who happen to be the complainants, have been examined at the trial.

4. I have heard Mr. Syed Riaz Hussain, Learned Counsel for the Petitioners, and Mr. Mohsin Qadri, Learned Senior AAG, in rebuttal.
5. The Learned Counsel for the Petitioners, while reiterating the stand already taken in the bail petition, submitted that the Petitioners have been falsely and frivolously implicated in the case FIR, being innocent having not committed the alleged offences. He further submitted that the Petitioners, being respectively the son and widow of the deceased, shared unquestionable love and affection with the deceased and cannot be supposed to have abetted his suicide. That ordinary family altercations or domestic differences cannot be construed as acts of abetment leading to commission of suicide. That the Petitioners have been in custody for more than one year. That Petitioner No. 1 is a student, while Petitioner No. 2 is an aged housewife. That the FIR in the case came to be registered after a

delay of nine months from the alleged occurrence, only when the sisters of the deceased, who were in long-standing property dispute with the family of the deceased, approached the Court of the Magistrate and obtained directions in that regard. That an accused is presumed innocent until proven guilty, and the burden of proving guilt lies squarely upon the prosecution. That there is no statutory bar for grant of bail in respect of an offence under Section 306 IPC, which does not prescribe death or life imprisonment but only carries a punishment of up to ten years. That Petitioners are deeply rooted in society, have faith in the rule of law, and undertake to abide by any conditions which may be imposed by this Hon'ble Court while granting bail.

6. *Per contra*, the Learned Senior AAG, Mr. Mohsin Qadri, in rebuttal argued that the Petitioners do not deserve the concession of bail as they are alleged to have committed a heinous and grave offence of subjecting the deceased to such harsh treatment that he was compelled to end his life. He submitted that the offences charged against the Petitioners are highly anti-social in nature. That the trial of the case is already in progress and prosecution witnesses are being recorded. That some of the prosecution witnesses examined so far have fully supported the charges against the Petitioners to the effect that the Petitioners and other co-accused subjected the deceased to harassment, torture, and mental agony, as a result of which he took the extreme step of committing suicide on 31st October 2023. That the Petitioners are likely to tamper with the prosecution evidence, as most of the independent prosecution witnesses are related to them. That the petitioners under fear of conviction are likely to prevail upon the prosecution witnesses for giving favourable statements in their favour.

7. Keeping in view the perusal of the instant bail application, the objections filed in rebuttal, the scanned copy of the trial court record and the consideration of the rival arguments advanced on both the sides, this Court in the facts and circumstances of the case is of the opinion that it may meet the ends of justice in case petitioners are admitted to bail in the case subject to some reasonable terms and conditions.
8. The petitioners along with the other co-accused stand formally charged by the learned trial court under sections 306, 120 B IPC as they are alleged to have abetted the commission of suicide by the deceased. Some witnesses have been recorded at the trial who are among the complainants being the sisters of the deceased at whose instance the case FIR came to be registered in the matter. The offence under Section 306 IPC carries a punishment of ten years. The offence, therefore, even does not attract the bar under Section 437 of the code corresponding to Section 480 BNSS, relevant when a court other than a court of sessions or this Court is approached.
9. It is a settled legal position that an accused is presumed to be innocent until proved guilty, and the burden of proving everything essential to the establish guilt lies squarely on the prosecution. The Petitioners are reported to be in custody for about one year. The trial of the case is in progress and there is nothing on record to suggest that, if enlarged on bail, the Petitioners would tamper with prosecution evidence or abscond during trial. It is equally settled that grant of bail is the rule and its denial an exception, particularly in cases which do not carry the sentence of death or imprisonment for life, and where there is no material to show that the accused, if granted bail, may misuse the concession. However, the factors concerning the heinousness of the crime, its impact on the interests of the State and society, and the

circumstances under which the crime is committed are also relevant for consideration.

10. The Learned Counsel for the Petitioners during his arguments made reliance on the authoritative judgments of the Hon'ble Supreme Court passed in "**Pawan Kumar v. State of Himachal Pradesh**" (2017) 7 SCC 780; "**Kumar @ Shivakumar v. State of Karnataka**" 2024 AIR SC 1283; "**Rajesh v. State of Haryana**" (2020) 15 SCC 359; as also judgment of this Court passed in CrIa(AS)-11/2021 in "**State of J&K through SHO Police Station Budhal v. Rakesh Kumar & Anr**", decided on 09.10.2024, with a view to substantiate that the allegations against the petitioners regarding harassment and torture do not by themselves constitute "abetment" as defined under Section 107 IPC. This Court, hesitates to make any comment at this stage of consideration of a bail application, touching the merits of the case.
11. The Petitioners have approached this Court through the instant successive application under Section 439 Cr.P.C. corresponding to Section 483 BNSS. The provisions under the aforesaid sections of law, vest wide discretionary powers in this Court as well as in the Court of Sessions regarding grant or cancellation of bail. The discretion is needed to be exercised in a judicious manner keeping in mind the guiding principles that are being laid down by the Hon'ble Apex Court regarding the consideration of the bail in case of non-bailable offences, while also considering the import of the provisions of Section 437 of code corresponding to Section 480 BNSS.
12. The Learned Trial Court, vide order dated 24th May 2025, appears to have declined bail to the Petitioners only on the ground that they stood charged for offences under Sections 306 and 120-B IPC and that sufficient material had been collected during investigation in support of

the prosecution case. Earlier applications filed before the Learned Judicial Magistrate (2nd Additional Munsiff, Srinagar) and the Learned Principal Sessions Judge, Srinagar, had also been rejected primarily on the ground that the case was still at the investigation stage and that the offences alleged were of a serious and highly anti-social character.

13. It needs to be emphasized that personal liberty guaranteed under Article 21 of the Constitution of India is a valuable right, which can only be curtailed under compelling circumstances recognised under law. The apprehensions expressed by the prosecution can be safeguarded by imposing reasonable conditions.
14. In the backdrop, this successive bail application is allowed, and the Petitioners are admitted to bail subject to their furnishing of personal and surety bonds in the amount of ₹50,000/- each to the satisfaction of the learned trial Court and the Superintendent of the Jail concerned, for assuring the compliance of the following conditions:
 - I. That they shall remain punctual at the trial;
 - II. That they shall not, directly or indirectly, make any inducement, threat, or promise to any of the unexamined prosecution witnesses so as to dissuade them from making their factual statements at trial;
 - III. That they shall not leave the territorial limits of the Union Territory of Jammu & Kashmir without prior permission of the Learned Trial Court.
15. In case the requisite surety bonds are furnished to the satisfaction of the learned trial Court, a formal release order shall be issued by the learned trial court, directing the Superintendent Jail concerned, where petitioners are presently lodged, to release the Petitioners after obtaining the requisite personal bonds from them.

16. However, it is needful to mention that nothing herein shall be construed as any interference with or prejudging of the merits of the case.
17. A copy of this order shall be forthwith forwarded to the learned trial court for information and necessary action.
18. **Disposed of.**

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR

30.09.2025

"Hilal"

Whether the judgment is approved for reporting: Yes

