

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

Reserved on: 17.11.2025

Pronounced on: 26.11.2025

Uploaded on: 26.11.2025

*Whether the operative part
or full judgment is
pronounced: **Full***

Bail App No.116/2025

c/w

Bail App No.115/2025

Bail App No.117/2025

BASHARAT AHMAD SHORA & ORS.

...PETITIONER(S)/APPELLANT(S)

*Through: - Mr. S. T. Hussain, Sr. Advocate, with
Ms. Nida Nazir, Advocate.
Mr. Danish Majid, Advocate
Ms. Syed Ahra, Advocate.
Ms. Mehjabeen Gulzar, Advocate.
Ms. Monisa Manzoor, Advocate.*

Vs.

UT OF J&K

...RESPONDENT(S)

*Through: - Mr. Mohsin-ul-Showkat Qadiri, Sr. AAG,
with Ms. Maha Jabeen, Assisting Counsel.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By this common order, afore-titled three bail applications filed by accused Basharat Ahmad Shora, Mohammad Ashraf Sheikh and Chaman Lal, are proposed to be disposed of. The petitioners are facing trial in a case arising out of FIR No.45/2024 for offences under Section

137(2), 64 of BNS and Section 3/4 of POCSO Act registered with Police Station, M. R. Gunj, before the Court of Special Judge POCSO Cases, Srinagar.

2) The facts leading to the filing of the present bail applications are that on 11.11.2024, Police Post, Urdu Bazar, Srinagar, received a written complaint from the father of the victim Ms. X, alleging that his daughter is missing from home since 08.11.2024. On the basis of this complaint, FIR No.45/2024 for offence under Section 137(2) of BNS was registered with Police Station, M. R. Gunj, Srinagar, and investigation of the case was set into motion. As per the school record, date of birth of Ms. X was found to be 25.11.2008. During the course of investigation, Ms. X was recovered by her maternal uncle on 17.11.2024 from Sunday market Lal Chowk, Srinagar. During the preliminary enquiry of Ms. X, it was found that she had been forcibly raped by four different persons at four different places on four different dates. Ms. X was subjected to medical examination at Government Lalladed Hospital, Srinagar. Her hymen was found ruptured. Some samples including her DNA sample and vaginal swabs were collected by the doctors, whereafter she was handed over to her parents by the Child Welfare

Committee, Srinagar. The statement of Ms. X under Section 183 of BNSS was recorded by the Judicial Magistrate.

3) In her statement recorded under Section 183 of BNSS, Ms. X narrated that she had left from her home with her friends Ashu and Junaid on Ashu's bike and they roamed in Srinagar City and went to Nishat. When it got late, they went to Ashu's house who lives in Rainawari, Srinagar. She was scolded by the mother of Ashu for having come to their home. On next day, Ashu dropped her near Zero Bridge, Srinagar. She further stated that she remained in SMHS Hospital, Srinagar, for two nights outside the ward whereafter she went to Sunday market, Srinagar, where she met petitioner Chaman Lal who took her to his hotel where he committed forcible sex upon her. Ms. X further stated that she stayed with Chaman Lal for two days whereafter he dropped her at SMHS Hospital where she stayed for another night. She again went to petitioner Chaman Lal who dropped her at Jahangir Chowk where she met an uncle who offered to take her to her destination. Ms. X boarded his car and he took her to a hotel near Zero Bridge, Srinagar, where he forcibly committed rape upon her. Ms. X stated that she does not know the name of the said uncle. Thereafter next morning, she went to Sunday market and was roaming over there

where she was spotted by her uncle Manzoor Khan and her cousin Iman Khan, who took her to home. She further stated that before she met the uncle at Jahangir Chowk who had forcible sex with her in the hotel near Zero Bridge, Srinagar, in between she had gone to Makhdoom Sahab Shrine in a car with a person who abused her but did not get physical with her. She further stated that at Makhdoom Sahab, she met an uncle whose name she does not know, who gave his phone number to her and promised to give her job. The said uncle took her in a car and forced her to take whisky. Ms. X turned heavy and when she opened her eyes, she found herself in the car of said person near Eidgah but she does not know whether or not the said person had sex with her. From there she went with Ashu to his Karkhana near Makhdoom Sahib where she stayed with him for night where Ashu had forcible sex with her and on the next day, Ashu left her at Zero Bridge, Srinagar. She further stated that now she wants stern action against Ashu and the two uncles, one who met her at Makhdoom Sahib and one who had forcible sex with her in hotel near Zero Bridge, Srinagar.

4) During the course of investigation, the person, namely, Ashu, was identified as petitioner Mohammad Ashraf Sheikh and he was arrested on 18.11.2024. Another person,

namely, Chaman was identified as petitioner Chaman Lal who was arrested on 24.11.2024 and third person was identified as petitioner Basharat Ahmad Shora. He was arrested on 29.11.2024. The test identification parade of petitioners Chaman Lal and Mohammad Ashraf Sheikh was conducted on 26.11.2024 in presence of Executive Magistrate, 1st Class, Khanyar, before independent witnesses. Similarly, the test identification parade of petitioner Basharat Ahmad Shora was conducted on 02.12.2024 in the presence of Executive Magistrate, 1st Class, Khanyar, in presence of independent witnesses and employees of Child Welfare Committee. The potency test of all the three petitioners was conducted and during the course of investigation, DNA samples of the petitioners as well as DNA sample of Ms. X were collected for their analysis and expert opinion. CCTV footage was asked from the hotel where the victim was alleged to have been subjected to sexual assault and Call Data Records of all the petitioners were also collected. It was found that the petitioners were present at the locations where the occurrence had taken place at the relevant time. The bank details of petitioner Basharat Ahmad Shora were also sought and it was found

that he had paid certain amount to the hotel manager where the occurrence had taken place.

5) Based upon the statement of the victim and the statements of other witnesses, offences under Section 137(2) and 64 of BNS and 3/4 POCSO Act were found established against the petitioner and, accordingly, the challan was presented against them before the Court of Special Judge POCSO Cases, Srinagar.

6) Further investigation of the case was conducted, during the course of which fourth accused, namely, Nissar Ahmad Joo was arrested on 8th May, 2025. His test identification parade was conducted in presence of the Executive Magistrate, 1st Class, Khanyar. He was also subjected to potency test and his DNA samples were also collected for their expert analysis. Call Data Records of the said accused were also collected. After investigation, offences under Section 137(2), 64 of BNS and 3/4 of POCSO Act were also found established against the said accused and the supplementary challan was laid against him before the Special Court POCSO Cases, Srinagar.

7) After the presentation of challan, the learned Special Court, vide its order dated 10.02.2025 framed charges for

offences under Section 137(2), 64 of BNS and Section 3/4 POCSO Act against the petitioners whereas after the presentation of supplementary challan, similar charges were framed against the fourth accused, namely, Nissar Ahmad Joo, vide order dated 17.07.2025 passed by the learned Special Court.

8) It appears that during the trial of the case, statements of Ms. X and her parents have already been recorded by the trial court. It further appears that the learned trial court has, vide its orders dated 17.06.2025, dismissed the bail applications of the petitioners on the ground that out of 38 witnesses, only three prosecution witnesses have been examined and, as such, the concession of bail cannot be extended to the petitioners at this stage.

9) The petitioners have sought bail on the grounds that the victim and her parents, while making their statements during trial of the case, have not supported the prosecution case and, as such, the petitioners are entitled to concession of bail. It has been further contended that the petitioners are innocent persons having no direct or indirect link with the alleged crime. It has been contended that the learned trial court has casually approached the bail applications of

the petitioners and rejected the same without any cogent reason. It has been contended that there is no statutory bar to grant of bail in offences under the POCSO Act and the presumption of guilt against the accused can always be rebutted during trial of the case. It has been contended that the material witnesses have already been examined by the prosecution and the other evidence which has been collected by the Investigating Agency is only corroborative in nature and even if the said evidence is read against the petitioners, they cannot be convicted of the offences for which they have been charged.

10) The respondent-State has contested the bail applications by filing its reply. In its reply, besides narrating the allegations made in the charge sheet against the petitioners, the respondent-State has submitted that the petitioners are involved in the offences of severe nature which fall within the category of rarest of rare cases, therefore, their release on bail at this juncture would have adverse impact on the public interest. It has been contended that if the petitioners are enlarged on bail, it would be a serious blow to the honour, esteem and dignity of the victim, particularly when there is cogent material on record against the petitioners. It has been further contended that the

offences for which the petitioners stand charged carry a maximum punishment of life imprisonment and on this ground also, they are not entitled to concession of bail. It has also been contended that most of the prosecution witnesses are yet to be examined in the case and it would be premature to enlarge the petitioners on bail at this stage. It has further been contended that there has been no change of circumstances since the dismissal of bail applications of the petitioners by the learned Special Judge and, therefore, the petitioners cannot maintain the present bail applications.

11) I have heard learned counsel for the parties and perused record of the case.

12) Before coming to the other aspects of the case, it is necessary to deal with the contention of the respondent that the instant bail applications are not maintainable because the earlier bail applications of the petitioners, after filing of the charge sheet, stand rejected by the trial court and, as such, there is no change of circumstances.

13) The question that arises for consideration is whether or not successive bail application will lie before this Court. The law on this issue is very clear that if an earlier application was rejected by an inferior court, the superior court can

always entertain the successive bail application. In this behalf, I am supported by the ratio laid down by the Supreme Court in the case titled **Gurcharan Singh & Ors vs. State (Delhi Administration), AIR 1978 SC 179** which has been followed by the Bombay High Court in the case of **Devi Das Raghu Nath Naik v. State, (1987) 3 Crimes 363**. Thus, the rejection of a bail application by Sessions Court does not operate as a bar for the High Court in entertaining a similar application under Section 439 Cr. P. C/483 BNSS on the same facts and for the same offence.

14) Having held that the instant bail applications are maintainable, let us now proceed to deal with the merits of these applications. So far as the principles governing grant or refusal of bail are concerned, the same have been elucidated in a large number of judgments rendered by the Supreme Court and this Court. The principles laid down in these judicial precedents can be summarized as under:

- (i) *The gravity of the offence and the nature of of the accusation including the frivolity of punishment in a case of conviction;*
- (ii) *The position and status of the accused vis-à-vis the victim and the witnesses;*
- (iii) *The likelihood of the accused fleeing from justice;*
- (iv) *The possibility of the accused tampering with the evidence and/or witnesses and obstructing the course of justice;*

- (v) *The possibility of repetition of the offence;*
- (vi) *Prima facie satisfaction of the Court in support of the charge including frivolity of the charge;*
- (vii) *Stage of the investigation;*
- (viii) *Larger interest of the public or the State;*

15) When it comes to offences punishable under a special enactment, such as, POCSO Act, the provisions contained in Sections 29 and 30 of the said Act are also to be borne in mind. Section 29 raises a presumption of commission of an offence under Sections 3, 5, 7 and 9 of the POCSO Act against a person who is prosecuted for commission of the said offence, unless contrary is proved. Similarly, Section 30 raises a presumption with regard to existence of culpable mental state against an accused in prosecution of any offence under the Act which requires a culpable mental state on the part of the accused. However, the accused has a right to prove the fact that he had no such mental state.

16) Coming to the facts of the present case. It is correct that involvement of the petitioners in the alleged crime has been found after the investigation of the case and charges against them have also been framed. Thus, there is a statutory presumption of guilt operating against them. However, as already stated, the statutory presumption of guilt, which is triggered by operation of Section 29 of the POCSO Act, is rebuttable in nature. Therefore, it is open to an accused to

bring to the notice of the Court the material or lack of it to show that the foundational facts giving rise to the presumption are *prima facie* not established in the case or that evidence led during the trial of the case rebuts the presumption operating against him. Thus, an accused will be well within his rights to persuade the Court on the basis of the circumstances that may be established during cross-examination of the witnesses conducted during trial of the case or on the basis of defence evidence, that the presumption of guilt operating against him in view of the provisions contained in Section 29 of the POCSO Act stands rebutted. It is also to be borne in mind that there is no statutory bar to grant of bail in a case involving offences under the POCSO Act and each case has to be considered on its peculiar facts and circumstances.

17) In the instant case, if we have a look at the statement of the victim, Ms. X, recorded during trial of the case, she has stated that petitioner Mohammad Ashraf Sheikh is known to her whereas she cannot identify the other two petitioners. She has further stated that she had gone to Makhdoom Sahib where she met petitioner Mohammad Ashraf Sheikh who was accompanied by his friend. She further stated that, in fact, one uncle committed forcible act

upon her. The said uncle made her to take whisky and it was on 29th November, 2024, that the said person made her to take whisky in his car near Jahangir Chowk and thereafter what happened to her, she does not know but the said person went physical with her. She further stated that during the day time, she went to Sunday market where she met her uncle Manzoor Khan who took her to her home and then to Police Station. She further stated that thereafter they have been looking for the uncle type person but he could not be traced. She also stated that the police subjected her to medical examination in LD hospital.

18) The witness (Ms. X) was declared hostile and was cross-examined by the APP. During her cross-examination, she admitted the contents of the statement made by her under Section 183 of BNSS to the extent that some uncle type person had committed wrong with her. She categorically stated that she does not know petitioner Chaman Lal. She denied that petitioner Chaman Lal had committed sexual intercourse with her. She further denied that petitioner Basharat Ahmad had paid her Rs.4000/. She denied having identified the petitioners in the presence of the Executive Magistrate. She admitted that her mother has purchased a new house in December, 2024 in Zainakadal but she does

not know wherefrom they got finances for the said house. She denied making the statement under any pressure or inducement.

19) The mother of the victim, in her cross-examination, has stated that her daughter told her that she was taken away by some uncle in his car and that she has mentioned the names of the petitioners in her statement only at the instance of the police. She further stated that her daughter told her that only an uncle had committed wrong with her and nobody else had done it.

20) The father of the victim, while making his statement during trial of the case, also stated that the names of the petitioners mentioned by him in his statement under Section 183 of BNSS have been narrated by him before the Magistrate on the asking of the police and that he does not know the petitioners.

21) From the foregoing narration of the statements of the victim and her parents, prima facie, it appears that they have not supported the prosecution version of the case. In fact, these witnesses have not stated anything incriminating against the petitioners. During the hearing of the instant bail applications, the victim and her mother, in response to the

notice issued by this Court, put in their appearance before the Court and expressed their no objection if bail is granted to the petitioners.

22) The learned Senior AAG, appearing on behalf of the respondent, has vehemently contended that merely because the victim has turned hostile and has not supported the prosecution case it cannot be stated that the petitioners have been able to rebut the presumption of guilt which has triggered against them in terms of Section 29 of the POCSO Act. He has contended that the statement of a hostile witness cannot be thrown out as a whole and at the time of final decision of the case, it is open to the learned trial court to use those portions of the statement of the victim which will be found reliable by the trial court. To support his contention, the learned Senior AAG has placed reliance upon the judgment of the Supreme Court in the case of **K. P. Tamilmaran vs. State**, 2025 SCC OnLine SC 958. He has also placed reliance upon the judgment of Punjab and Haryana High Court in the case of **Subash Chander vs. State of Haryana**, 2021 SCC OnLine P&H 1531, to press home his contention that even in the absence of support from the victim, the bail cannot be granted to an accused in a heinous offence like an offence of rape of a minor victim.

23) So far as the legal position that statement of a hostile witness cannot be thrown out as a whole is concerned, there cannot be any dispute with the said legal position and it can also not be disputed that in a heinous offence of rape upon a minor victim the Court generally acts with great circumspection before enlarging the accused on bail. However, situation in the present case is somewhat different. The victim has categorically denied involvement of the petitioners in the alleged crime. There is hardly anything in her cross-examination that would, *prima facie*, go on to show that she has stated anything in support of the prosecution version.

24) The DNA samples of the petitioners and DNA sample from the vaginal swab of the victim have been subjected to test analysis. The report of the expert reveals that no foreign DNA was detected in the sample. It has also been reported that DNA profiles generated from samples marked as B-1556-24, B-1561/24 confirms that the source of sample is human female and profiles are consistent with each other and belong to same individual (female). The medical report further suggests that there were no marks of violence on the private parts of the victim. There was no evidence of recent sexual intercourse with the victim.

25) In the face of aforesaid scientific evidence on record coupled with the nature of statement that has been made by the victim during the course of trial, it can safely be stated that the petitioners have been able to rebut the presumption of guilt which had triggered against them upon framing of charges under Section 3 and 4 of the POCSO Act.

26) It appears that the learned trial court has, while rejecting the bail applications of the petitioners, failed even to take note of the statements of the victim and her parents recorded during trial of the case. The omission on the part of the learned trial court to do so has resulted in passing of the orders rejecting the bail applications of the petitioners which are not sustainable in law.

27) In view of the nature of evidence available against the petitioners and without commenting upon the merits of the case, it is clear that during trial of the case, the statutory presumption of guilt operating against the petitioners in terms of Section 29 of the POCSO Act stands rebutted. The petitioners have been in custody for the last one years. The statements of material witnesses have already been recorded and even if the petitioners are released on bail at this stage, there is no chance of the prosecution witnesses getting

tampered because the victim and her near relations have already been examined during trial of the case.

28) Merely because the petitioners are facing trial for heinous offences which entail punishment extending upto life imprisonment is not a good enough reason to deny concession of bail to them when their, *prima facie*, involvement in the alleged crime is highly doubtful. The concession of bail to the petitioners, in these circumstances, cannot be denied just to teach them a lesson or to satisfy the conscience of the society as it would amount to inflicting pre-trial punishment upon them, which is impermissible in law.

29) For the foregoing reasons, the petitions are allowed and the petitioners are admitted to bail subject to the following conditions:

- (i) *That they shall furnish personal bonds in the amount of Rs.50,000/ each with two sureties each of the like amount to the satisfaction of the learned trial court;*
- (ii) *That they shall appear before the learned trial court on each and every date of hearing till conclusion of the trial.*
- (iii) *That they shall not leave the territorial limits of the Union Territory of J&K without prior permission of the learned trial court;*

(iv) *That they shall not intimidate or tamper with prosecution witnesses/evidence.*

30) Observations made hereinabove shall remain confined to the decision of the instant applications only and shall not be construed as expression of an opinion on the merits of the case.

31) The bail applications shall stand **disposed** of.

(SANJAY DHAR)
JUDGE

Srinagar
26.11.2025
“Bhat Altaf”

Whether the Judgment is speaking:	Yes
Whether the judgment is reportable:	Yes