

Serial No. 121
Suppl. Cause List

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

Bail App No. 141/2025 ClrM 1024/2025

Ghulam Mohammad Khan and Anr.

.... Petitioner/Appellant(s)

Through: Mr. Asif Ahmad Bhat, Advocate.
Vs.

**Union Territory Through
Police Station Panzlla Rohama**

.... Respondent(s)

Through: Mr. Waseem Gul, GA.

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER

08.10.2025

1. Through the medium of the instant successive petition filed in terms of the provisions of Section 483 of the BharatiyaNagarik Surkasha Sanhita 2023 (hereinafter referred to as the 'BNSS' for short), the petitioners have sought the grant of bail in their favour in case FIR No. 37/2025 registered under Sections 109(1), 126(2) of Bharatiya Nyay Sanhita, 2023 (hereinafter referred to as the 'BNS' for short), with PS Panzlla, Sopore on the main grounds that they are innocent and have not committed the alleged offences; that they have been falsely and frivolously implicated in the case FIR on the basis of animosity on account of a long-pending land dispute; that they earlier approached the Courts of Territorial Magistrate as well as the Sessions Judge who declined bail in their favour; that the learned Judicial Magistrate Dangiwachha declined their prayer for bail through his order dated 24.06.2025 on the ground that since the offence under Section 190(1) provides for punishment of life imprisonment as an alternate and, as such, the bar in terms of provisions of Section 480 BNSS is attracted and secondly the said offence being exclusively triable by the Court of Sessions, as such, he cannot consider the bail application; that the learned

Judicial Magistrate through his order dated 24.06.2025 returned the bail application for being presented before the appropriate forum; that the learned Additional Sessions Judge, Sopore, was thereafter approached with the said returned bail application who also refused to grant bail on the grounds that the investigation in the case is still incomplete with the weapon of offence yet to be recovered and the medical opinion in respect of the injuries sustained by the injured awaited; that it is a settled legal position that bar in terms of Section 480(1) BNSS corresponding to provisions of Section 437(1) of the erstwhile repealed Code does not apply to offences which do not carry the punishment of life imprisonment as alternate of death penalty; that it is also well settled that a Magistrate is also competent to grant bail in the offences exclusively triable by the Court of Sessions; that the petitioner/accused No. 1 is an old and infirm person of the age of 70 years who has been suffering in custody in terms of his health since last more than four months; that it is a settled legal principle that bail is a rule and its denial an exception especially in cases which do not carry sentence of death or imprisonment for life in alternative and where there is nothing on record to show that accused if admitted to bail will jump over the concession of the same by tampering with the prosecution evidence and absconding at the trial; that the liberty of the petitioners stands infringed owing to their continued detention, also amounting to their pre-trial conviction and that they shall abide by any conditions that may be imposed by this Court in case of their enlargement.

2. The respondent-State has resisted the bail application through the memo of the objections filed by the learned Dy. AG on the grounds that petitioners are involved in heinous offences punishable under Sections 109(1), 126(2) BNS which are non-bailable and, as such, they cannot claim bail as a matter of right. That the petitioners/accused attacked the victim Habibullah Khan, father of the complainant while he was present inside the mosque and attempted to kill him. That while considering the cumulative effect of the guiding principles evolved from time to time by the Hon'ble Apex Court for consideration of the bail application viz.

heinousness of crime, severity of punishment, character and antecedents of the accused, effect of the crime on the society and State, reasonable apprehension of accused persons misusing the concession of bail by tampering with prosecution evidence and absconding at the trial etc. etc., the accused persons do not deserve the concession of bail. That the case is still at the investigation stage and, as such, the enlargement of the petitioners is likely to effect the progress of the same. That the rejection of the bail does not amount to pre-trial conviction and, as such, does not affect the cardinal principle of criminal jurisprudence regarding the innocence of an accused till proved guilty at the trial.

3. I have heard the learned counsel for the parties who reiterated their stands respectively taken in the application and memo of objections.

4. I have perused the instant bail petition and the copies of the orders dated 24.06.2025 and 16.07.2025 respectively passed by the learned Judicial Magistrate Dangiwachha and learned Additional Sessions Judge Sopore on the earlier bail application of the petitioners.

5. Keeping in view the aforesaid perusal and consideration in the light of the law on the subject, this Court is of the opinion that it may meet the ends of justice in case the instant successive bail application is allowed and the petitioners/accused are admitted to bail in the case FIR in question subject to some reasonable terms and conditions.

6. Admittedly, in case of non-bailable offences which do not carry a sentence of death or imprisonment for life in alternative, bail is a rule and its denial an exception especially in cases where firstly the custodial questioning of an accused is not imperative for the logical and scientific conclusion of the investigation and secondly where there is nothing on record to show that the accused, if admitted to bail, will misuse the concession by tampering with the prosecution evidence, by non-cooperation and association with the investigating agency and also by subsequent absconding at the trial.

7. Apart from the statutory bar, if any, two paramount considerations viz. likelihood of accused fleeing from justice and tampering with the

prosecution evidence relate to the ensuring of a fair trial of the case in a court of law. It is essential that due and proper appreciation and weightage should be bestowed on these factors apart from others. The grant of bail or the denial of the same falls within the purview of the judicial discretion meant to be exercised on sound legal principles upon the logical interpretation and application of the same in the given facts and circumstances of the case. The necessary arrests subject to the law of bails as provided under the Code, BNSS and the provisions of different special Legislations are permissible under the Constitution of our Country by way of a reasonable exception to the fundamental right to liberty guaranteed under Article 21 of the Constitution and the mandate of the provisions of Article 22 of the Constitution is meant to be followed upon making any such necessary arrests.

8. In **“State of Rajasthan Jaipur Vs. Balchand AIR 1977 S.C. 2447”**, the Hon’ble Apex Court has held, “basic rule may perhaps be tersely put as bail not jail, except where there are circumstances of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating the witnesses and the like, by the petitioner who seeks enlargement on bail from the court.

9. It is also well settled that the bar imposed under section 480 of BNSS on the exercise of the discretion in the matters of bail subject to proviso contained in the section, is confined to the offences carrying a sentence of death or imprisonment for life in alternative and the offences carrying a sentence of imprisonment for life disjunctive of death sentence are exempted from the embargo.

10. No single rule or a golden litmus test is applicable for consideration of a bail application and instead some material principles/guidelines are needed to be kept in mind by the Courts and the Magistrates for consideration of a bail application especially including:-

- i. The judicial discretion must be exercised with the utmost care and circumspection;
- ii. That the Court must duly consider the nature and the circumstances of the case;

- iii. Reasonable apprehension of the witnesses being tampered;
- iv. Investigation being hampered or
- v. The judicial process being impeded or subverted.
- vi. The liberty of an individual must be balanced against the larger interests of the society and the State.
- vii. The court must weigh in the judicial scales, pros and cons varying from case to case.
- viii. Grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the rule;
- ix. The court at this stage is not conducting a preliminary trial but only seeking whether there is a case to go for trial;
- x. 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.
- xi. The facts and circumstances of the case play a predominant role.

11. The Hon'ble Apex Court in **Gur Bakash Singh Sibbia Vs. State of Punjab AIR 1980 S.C. 1632**, referred to the following extract from the American Jurisprudence having bearing on the subject of bail,

“where the grant of bail lies within discretion of the court, granting or denial is regulated to a large extent, by the facts and circumstances of each particular case. Since the object of detention order/imprisonment of the accused is to secure his appearance and submission to jurisdiction and the judgment of the court, the preliminary enquiry is whether a recognizance or bond would yield that end. It is thus clear that the question whether to grant bail or not, depends for its answer upon a Variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity for justifying the grant or refusal of bail”.

12. It has been laid down by the Hon'ble Supreme Court in Sanjay Chandra vs. Central Bureau of Investigation AIR 20012 SC 830 at Para 14 of its Judgment as under:-

14) In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventive. Deprivation of

liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment beings after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, necessity is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”

13. The Hon'ble Supreme Court in **Dataram Singh vs State of UP and Anr. 2018 3 SCC 22** has held that even if grant or refusal of bail is entirely the discretion of a Judge, such discretion must be exercised in a judicious manner and in a humane way observing as follows:

“2. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstance of a case.

3. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during

investigations, a strong case should be made out for placing that person in judicial custody after a charge-sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure 1973.”

14. In **Pankaj Jain vs Union of India and Anr. 2018 5 SCC 743**, the Hon'ble Supreme Court has held that the grant of bail has to be exercised compassionately. Heinousness of crime by itself cannot be the ground to outrightly deny the benefit of bail if there are other overwhelming circumstances justifying grant of bail. The Hon'ble Apex Court in its Judgments cited as **Siddharam Satlingappa Mhetre Vs. State of Maharashtra AIR 2011 SC 312** and **Sushila Aggarwal and Ors. Vs. State (NCT of Delhi) and Anr 2020 SC online 98**, has interpreted law even on the subject of anticipatory bail with a very wide outlook and while interpreting concept of liberty guaranteed under Article 21 of the Constitution of our Country in a flexible and broader sense.

15. Admittedly as per provisions of Section 480(1)(i), an accused person shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of offence punishable with death or imprisonment for life.

16. The investigation in the case FIR is believed to be at advanced stage. It has been mentioned by the respondents in the memo of objections that the opinion in respect of the injury sustained by the victim has been

obtained which has been reported to be of simple nature. It has also been mentioned in the objections that no weapon of alleged offence could be recovered from the possession or at the instance of the petitioners.

17. There is nothing on record to suggest that petitioners, if admitted to bail, will jump over the concession and misuse the same by attempting to influence the prosecution witnesses or absconding at the trial.

18. In the opinion of the Court, the guiding factors/underlying principles that have been from time to time evolved by the Hon'ble Apex Court and various High Courts of our Country including this Court for consideration of a bail application jointly or severally do not justify the denial of bail to the petitioners/accused in the given facts of the case.

19. This Court in its opinion is fully fortified with the authoritative law laid down by the Hon'ble Apex Court cited as **Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40** in which the bail was granted to the appellant who was involved in economic offences. It is profitable to reproduce the relevant paras 24 and 25 of the judgment for ready reference:-

“24. In the instant case, as we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating of the scales of justice.”

“25. The provisions of Cr.P.C. confer discretionary jurisdiction on criminal courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable

right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.”

20. In **Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280**, the Hon’ble Apex Court has laid down the special factors for taking into consideration while exercising the bail jurisdiction and the relevant para 8 of the said judgment is reproduced as hereunder for ready reference:-

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

21. The observations of the Hon’ble Apex Court laid down in **State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21** at para 18 of the judgment also deserve a needful mention:

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the

offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see *Prahlad Singh Bhati v. NCT, Delhi* and *Gurcharan Singh v. State (Delhi Admn.)*]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.”

22. The Hon’ble Apex Court in Sanjay Chandra’s case cited supra has *inter alia* held at para 40 of the judgment, “the grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon, whenever his presence is required.”

23. As hereinbefore mentioned, the Hon’ble Apex Court in its judgments cited as **Siddharam Satlingappa Mhetre Vs. State of Maharashtra decided on 02/12/2010, AIR 2011 SC 312 and Sushila Aggarwal and others vs. State (NCT of Delhi) and Another decided on January 29, 2020 by a larger bench 2020 SC online 98**, has interpreted law on the subject of anticipatory bail with a very wide outlook and while interpreting the concept of liberty guaranteed under Article 21 of the Constitution of our country in a flexible and broader sense. It has been *inter alia* observed by the Hon’ble Apex Court in the

aforesaid judgments that the exact role of the accused must be properly comprehended before arrest is made. “The inner urge for freedom is a natural phenomenon of every human being. Respect for life and property is not merely a norm or a policy of the state but an essential requirement of any civilized society. Just as the liberty is precious to an individual, so is the society’s interest in maintenance of peace, law and order.”

24. For the foregoing discussion, the instant petition is allowed and petitioners namely Ghulam Mohammad Khan S/O Mangta Khan and Azad Ahmad Khan S/O Ghulam Mohammad Khan are admitted to bail in case FIR No. 37/2025 of P/S Panzlla Sopore, subject to their furnishing of surety and personal bonds to the tune of **Rs. One Lakh each** to the satisfaction of the learned Registrar Judicial of this Court and the Superintendent of the Jail Concerned.

25. This order shall, however, be subject to following conditions:

- i. The petitioners/accused shall associate with the Investigating Officer during investigation of the case and shall remain punctual at the trial in case of presentation of any final report.
- ii. The petitioners/accused shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case including the prosecution witnesses listed in the case, so as to dissuade him/them from disclosing such facts to the court or to any police officer.
- iii. The petitioners/accused shall not leave the limits of the UT of Jammu and Kashmir without the prior permission of the Investigating Officer.
- iv. That the petitioners/accused shall not repeat commission of any crime.
- v. That the petitioners/accused shall not deliberately confront the alleged victim.

26. In case the requisite surety bonds are furnished to the satisfaction of the learned Registrar Judicial of this Court and duly attested, a formal release order shall be issued by the learned Registrar Judicial directing the release of the petitioners/accused in the instant case FIR No. 37/2025 of PS Panzlla from the place of their lodgment subject to their (petitioners/accused) furnishing personal bonds in the amounts of ₹ 1 lakhs each to the satisfaction of the Superintendent of the jail concerned.

27. It is needful to mention that nothing in this order shall be construed as any prejudging of or interference into the merits of the case which obviously shall be subject matter of the trial.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR
08.10.2025
Shahid

Whether the order is speaking: Yes
Whether the order is reportable: Yes