

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

CJ Court

CrlA(D) No.33/2022

UT OF J&K through SHO, P/S Zakoora,

...APPELLANT(S)

*Through: - Mr. Mohsin S. Qadiri, Sr. AAG, with
Ms. Maha Majeed, Assisting Counsel.*

Vs.

Towseef Ahmad Shah
S/o Ghulam Mohammad
R/o Parimpora, Srinagar.

...RESPONDENT(S)

*Through: - Mr. Adil Pandit, Advocate, with
Mr. Zahid Hussain, Advocate.*

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**ORDER
10.09.2025**

1) The instant appeal is directed against the order dated 12.02.2022 passed by the Court of learned Special Judge (Designated under NIA Act), Srinagar (for short "the trial court") in the case titled "*State vs. Towseef Ahmad Shah and others*", whereby the respondent has been enlarged on bail in FIR No.47/2017 registered with Police Station, Zakoora.

2) The brief facts of the case are that on 17.11.2017, a Naka was laid under the supervision of Sub Inspector

Imran Tak at 07 Chinar Gulab Bagh and during Naka checking, a Santro car bearing registration No.JK01V-5593 was signaled to stop but the driver did not stop the vehicle and the inmates of the vehicle resorted to indiscriminate firing upon the Naka party, as a result of which, Sub Inspector Imran Tak and SPO Suhail Ahmad suffered injuries. The respondent was arrested on spot whereas the other terrorists managed to escape. One terrorist also received bullet injuries in the cross firing. On the receipt of above mentioned information, pursuant to the docket, FIR No.47/2017 for commission of offences under Section 307 RPC and 7/27 Arms Act was registered. Later on Sub Inspector Imran Tak succumbed to the injuries. After the conclusion of investigation, the charge sheet for commission of offences under Section 307, 302, 34 RPC, 7/27 Arms Act and Sections 13, 15, 16, 17, 18 and 20 of ULAP Act was laid before the competent court.

3) Vide order dated 28.08.2018, the respondent was charged for commission of offences under Section 307, 302, 34 RPC, 7/27 Arms Act and Sections 13, 15, 16, 17, 18 and 20 of ULAP and the prosecution was directed to lead evidence. The record depicts that after the examination of 25 witnesses out of 44 listed prosecution witnesses, the learned trial court vide order dated

12.04.2022, which is impugned in this appeal, granted bail to the respondent.

4) The matter was heard in part on 09.09.2025 and was posted for today.

5) The learned counsel for the respondent, when confronted with the fact that the learned trial court had not at all adverted to the charge under Section 302 RPC while granting bail in terms of the impugned order and further that the learned trial court had virtually appreciated evidence as if it was deciding the case finally and more particularly the statements made by PWs-5 and 39, namely, Head Constable Bashir Ahmad and Aijaz Ahmad respectively, he submitted that the order impugned be set aside and the learned trial court be directed to consider the bail application afresh.

6) After having gone through the order impugned, we find that the learned trial court has observed that indeed a couple of witnesses have spoken about the presence of the respondent on the spot at the time of occurrence but nothing has come in their respective statements with regard to any overt act having been done by the respondent. We are of the considered view that the learned trial court, it appears, has conducted a mini-trial while

deciding the application for grant of bail, which is impermissible in law.

7) Be that as it may, as the learned counsel for the respondent has agreed for setting aside of the order impugned and for consideration of the bail application afresh, we deem it proper to set aside order dated 12.04.2022 passed by the learned trial court with a direction to the learned trial court to decide the bail application afresh in accordance with law. **Ordered accordingly.** Needless to say that any observation made hereinabove shall not be construed as an expression of opinion on the merits of the case of either of the parties.

8) The appeal is accordingly allowed.

9) A copy of this order be sent to the trial court for information and compliance.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
10.09.2025
"Bhat Altaf"

Whether the **ORDER** is reportable: **No**