

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...

Bail App no.145/2025

UT of J&K through SHO P/S Devsar

.....Petitioner(s)

Through: Mr. Zahid Qais Noor, GA

Versus

Nazir Ahmad Malik

.....Respondent(s)

Through: Mr. Aftab Ahmad, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL JUDGE

ORDER

03.11.2025

1. Through the medium of this petition, bail granted by the court of Principal Sessions Judge, Kulgam (for short "*Sessions Court*"), in case FIR no.15/2023 of police station Devsar for offences under Section 8/15 NDPS Act, 7/25 A.Act, 316(5) and 49 BNS, vide order dated 02.05.2025, is sought to be set-aside.
2. I have heard counsel for applicant/petitioner and considered the matter and have also gone through order impugned.
3. The case set up by applicant is that on 21/22 March 2025, police station Devsar received a written docket for registration of a case against accused persons in which it was mentioned that police party on receiving information from reliable sources about presence of some suspected items at Ahanger Mohalla, Gudder and during search 06 kilograms of poppy straw, kept in a polyethene envelope and 30 live rounds of AK rifle, hot-case, steel plate and water bottle from joint cow-

shed of Atta Mohd Wani and Jabbar Wani son of Lassi Ahmad Wani resident of Gudder were seized, and site plan was prepared and statement of witnesses recorded under Section 180 BNSS. The suspected article was found in the portion of cowshed belonging to Atta Mohd Wani. During investigation, Atta Mohd Wani revealed that he and Mohd Jabbar Wani are real brothers and have had a dispute for many years regarding inheritance and self-acquired. Atta Mohd Wani pointed suspicion towards his nephew, Javid Ahmad Wani and accordingly said Javid Ahmad Wani was summoned for investigation; during which he confessed to the crime.

4. According to applicant, respondent is involved in heinous offence of cultivating poppy straw plants and ought not to have been granted bail by Sessions Court inasmuch as impugned order has been passed in negation of law laid down by the Supreme Court in various judgements. It is also being stated that Sessions Court has ignored the gravity of offences committed by accused/respondent while granting bail.
5. Perusal of impugned order reveals that Trial Court has stated therein that accused persons, including respondent, are not involved in the offence punishable with death or imprisonment of life and, therefore, accused has a fundamental right to prepare the defence. It has also been said by the Trial Court while passing order impugned and granting bail in favour of accuse/respondent that bail or jail at pre-trial or post-conviction stage belongs to blurred area of criminal justice system and mostly depends upon judicial discretion. The provisions of Code of Criminal Procedure confer discretionary jurisdiction on criminal courts to grant bail in favour of accused pending trial. Mere gravity of offence

and severity of punishment is no ground for rejection of bail application especially where there is no allegation that if released on bail, accused is likely to abscond with a view to evade trial. And it is only after observing all these aspects of the matter that the Sessions Court has passed order impugned granting bail in favour of accused persons. It is pertinent to mention here that impugned order does not call for any interference and as such, the instant application is **dismissed**.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR

03.11.2025

Imtiyaz

