

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(Through Virtual Mode)

Reserved on: 04.07.2025
Pronounced on: 17.11.2025
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Bail App No.83/2024
c/w
Bail App No.77/2024
Bail App No.78/2024
Bail App No.79/2024
Bail App No.80/2024
Bail App No.81/2024
Bail App No.84/2024
Bail App No.85/2024
Bail App No.86/2024

Rahail Ahmad Sheikh ...Petitioner/Appellant(s)

Through: Mr. Shariq J. Reyaz, Advocate

Vs.

UNION TERRITORY OF J&K ...Respondent(s)

Through: Mr. Z. A. Qureshi, Sr. Advocate with Assisting
Counsel for the complainant.

CORAM: HON'BLE MR JUSTICE RAHUL BHARTI, JUDGE

ORDER

1. By virtue of this judgment, this Court is putting disposal to nine (9) bail petitions, all preferred individually by the undertrials in an ongoing criminal case on file No. 43/Sessions of the court of learned Principal Sessions

Judge, Anantnag for commission of offences charged under sections 147/341/447/307/302 & 120-B Indian Penal Code.

2. The alleged incident by reference to which the accused persons came to be so booked came to take place is of 09.07.2020 when prosecution witness No. 1 – Ghulam Nabi Sheikh (the Complainant) alongwith his son –Zakir Hussain (prosecution witness No. 2) were said to have been working upon their field near Dawoodia Public School, Gohan Vailoo and came to be pounced upon by group of 14 accused persons subjecting two to physical beating by use of fists and kicks in the course of which prosecution witness No. 1 – Ghulam Nabi Sheikh's, second son Ishfaq Ahmad Sheikh came to intervene but was allegedly subjected to the physical beating by the same set of assaulters and trespassers leaving Ishfaq Ahmad Sheikh injured and unconscious as also prosecution witness No. 2 – Zakir Hussain injured and then all fleeing from the scene upon seeing Ishfaq Ahmad Sheikh losing consciousness in the beating intending him to suffer death.

3. This incident resulted in a written complaint getting made by prosecution witness No. 1 – Ghulam Nabi

Sheikh (the complainant) to Police Station Kokernag resulting in registration of FIR No. 94/2020 dated 09.07.2020 for alleged commission of offences under sections 147/447/307 & 120-B Ranbir Penal Code naming 14 persons as being the alleged culprits having carried out the criminal trespassing and the murderous assault.

4. On 09.07.2020, Ishfaq Ahmad Sheikh, one of the two allegedly beaten son of prosecution witness No. 1- Ghulam Nabi Sheikh was taken to Sub Divisional Hospital Kokernag in an unconscious state where he was found to be brought dead and despite efforts made to revive lost breath by the administered medical treatment did not respond only to be confirmed dead.

5. This development of demise of Ishfaq Ahmad Sheikh resulted in insertion of an offence under section 302 Indian Penal Code by reference to FIR No. 94/2020 joining the already registered offences mentioned therein and bearing investigation. All the named fourteen (14) accused persons came to be arrested during the course of investigation which resulted in preparation of a Final Police Report No. 65/2020 dated 21.09.2020 thereby booking 14 accused persons, namely:-

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|----------------------------------|------------------|
| 1. Mohd. Ashraf Sheikh | - Accused No. 1 |
| 2. Ghulam Hassan Sheikh | - Accused No. 2 |
| 3. Ishtiaq Ahmad Sheikh | - Accused No. 3 |
| 4. Amir Ahmad Sheikh | - Accused No. 4 |
| 5. Imtiyaz Ahmad Sheikh | - Accused No. 5 |
| 6. Ashiq Hussain Khanday | - Accused No. 6 |
| 7. Mudasir Ahmad Sheikh | - Accused No. 7 |
| 8. Rahail Ahmad Sheikh | - Accused No. 8 |
| 9. Abdul Majeed Sheikh | - Accused No. 9 |
| 10. Farmeena Jan alias Minha Jan | - Accused No. 10 |
| 11. Gousia Jan | - Accused No. 11 |
| 12. Ruby alias Aalia Jan | - Accused No. 12 |
| 13. Jawahira Bano | - Accused No. 13 |
| 14. Shahi Jahan Shah | - Accused No. 14 |

for alleged commission of offences under sections 147/341/447/307/302 & 120-B Indian Penal Code.

6. Final Police Report No. 65/2020 came to be committed to Court of Principal Sessions Judge, Anantnag on its file No. 43/Sessions on 25.09.2020.

7. Out of list of above named 14 accused persons, four happened to be women i.e. Mst. Jawahira Begum, Mst. Ruby Jan alias Aalia Jan, Mst. Farmeena Jan @ Minha Jan and Mst. Gousia Jan, who figured as accused No. 13, 12, 10 & 11..

8. Accused No.13 namely Mst. Jawahira Begum, aged 68 years, came to be granted interim bail in terms of

an order dated 12.10.2021 which came to be later on made absolute vide an order dated 27.06.2022.

9. The charge framing order dated 24.01.2021 framing charges under sections 147/341/447/307/302/120-B Ranbir Penal Code came to be questioned in a petition CrI.R No.21/2021 before this Court which came to be negated by virtue of an order dated 29.03.2022. Vide same very order dated 29.03.2022 even the bail application No.108/2021 came to be rejected.

10. The trial court of learned Sessions Judge, Anantnag, by virtue of an order dated 27.06.2022, came to deny the bail in favour of the accused persons except accused No.13 namely Mst.Jawahira Begum whose interim bail came to be made absolute.

11. Later on responding to an application/s for bail, the court of learned Sessions Judge, Anantnag, by virtue of an order dated 11.08.2022, granted bail in favour of accused No.2-Gh. Hassan Sheikh, accused No.10-Mst. Farmeena Jan alias Minha Jan and accused No.11-Mst. Gousia Jan.

12. During the course of trial when some of the prosecution witnesses had come to be examined, fresh bail

applications were laid by the under-trials in custody which came to be rejected by virtue of an order dated 14.02.2023.

13. The accused No.12-Mst. Ruby Jan alias Aalia Jan, however, came to be granted bail on medical grounds in terms of an order dated 09.07.2022.

14. Thus, out of array of 14 accused persons, accused No.2-Gh. Hassan Sheikh, accused No.10-Mst.Farmeena @ Minha Jan, accused No.11-Mst.Gousia Jan, accused No.12-Mst.Ruby Jan @ Aalia and accused No.13-Mst.Jawahira Begum came to be granted bail, leaving the 09 accused persons as under-trials in custody whose attempt to secure bail from the trial court again failed by virtue of an order dated 27.06.2024 passed by the court of learned Sessions Judge, Anantnag on the premise that the offence against the accused persons being under section 302 IPC, disentitles the accused persons in custody as an undertrial to the grant of bail.

15. The institution of individual bail applications by all the nine accused persons came to take place before this Court for seeking bail by invoking powers of this Court in terms of section -482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

16. At the time of adjudication of these bail petitions, all prosecution witnesses have stood examined with accused availing their right to lead evidence in defence.

17. The incident which has booked the 14 accused persons in the alleged commission of offences leading to registration of FIR No. 94 of 2020 followed by the final police report No.65 of 2020 bears narrative that the complainant (FIR maker) namely Gh. Nabi Sheikh (prosecution witness No. 1) and his son Zakir Hussain Sheikh (prosecution witness No. 2) were working in their agriculture field located adjacent to Davoodiya Public School, Gohan Vailoo when at 10.00 a.m. the accused No. 1-Mohd. Ashraf Sheikh, accused No.3-Ishtiyaq Ahmad Sheikh, accused No.4-Amir Ahmad Sheikh, accused No.6-Ashiq Hussain Khanday, accused No.9-Ab. Majid Sheikh, accused No.7-Mudasir Ahmad Sheikh, accused No.8-Ruhail Ahmad Sheikh and accused No.2-Gh. Hassan Sheikh joined by accused No.11-Mst. Gousia Jan, accused No.12-Mst.Ruby Jan @ Aalia Jan, accused No.13-Mst. Jawahira Begum accompanied by one Shahjahan-driver of Sumo vehicle bearing registration No. JK17-0386 trespassed into the land physically grabbing the complainant (PW-1)- Gh. Nabi Sheikh's son Zukir Hussain

and subjected him to beating which resulted in intervention of complainant –PW-1 Gh. Nabi Sheikh's son Ishfaq Ahmad Sheikh.

18. In the process of his intervention the complainant (PW-1)- Gh. Nabi Sheikh's son Ishfaq Ahmad Sheikh came to be subjected to a kick on his stomach leaving him unconscious and later on succumbing to his injury and expiry. The accused persons after having carried out an assault left the scene and site of crime and whereupon the registration of FIR No.94 of 2020 under sections 147/447/307/120-B IPC was registered, later on to be added with the commission of offence under section 302 IPC on account of the death of Ishfaq Ahmad Sheikh.

19. Before this Court proceeds to consider and aspect and prospect of granting or non-granting of bail to the petitioners as undertrials in custody undergoing trial for commission of offences one of which being section 302 Indian Penal Code, this Court needs to refer and refresh itself with respect to the salient dictums of law drawn from the pronouncements of the judgment of the Hon'ble Supreme Court of India in the spread of time in the matter of grant of bail or refusal thereof. The salient aspects can be enumerated as under:-

- Nature of accusation and severity of punishment in case of conviction and nature of supporting evidence.
- The manner in which the crime is alleged to have been committed.
- Role attributed to the accused.
- Criminal antecedents.
- Probability of tempering of the witnesses and repeating the offence if the accused are enlarged on bail.
- The likelihood of the accused being unavailable in the event of bail being granted.
- Reasonable apprehension of tampering of the witnesses or threat apprehension to complainant.
- The possibility of obstructing the proceedings and awaiting the courts of Justice and the overall desirability of releasing the accused on bail.
- Exercise of discretion in a judicious manner.
- Exercise of discretion is not to be a matter of course.
- At the stage of granting of bail, a detailed examination of evidence and elaborate documentation of merit of the case need not be undertaken.
- There is a need to show reasons for prima facie concluding why bail was being granted particularly offence charged is serious.
- In regard to cases where earlier bail applications have been rejected, there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and

after such consideration if the court is of the opinion that bail has to be granted, then the said court will have to give specific reasons why in spite of such earlier rejection, the subsequent application for bail should be granted.

- An accused has a right to make successive bail applications for grant of bail. The court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a few different from the one taken in the earlier applications.
- Exercise to be undertaken by the court at this stage of giving reasons for grant or non-grant of bail is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.

20. The aforesaid dictums of law related to bail can be sourced to the spectrum of judgments of the Hon'ble Supreme Court of India, some of which can be enumerated herein as under:-

1. 1962 SC 253, The State vs Capt. Jagjit Singh

2. 1978 SC 429, Gudikanti Narasimhulu and others Vs Public Prosecutor, High Court of Andhra Pradesh.
3. 1978 (1) SCC 118, Gurcharan Singh and others Vs Sate (Delhi Administration).
4. AIR 1980 SC 1632, Gurbaksh Singh Sibbia Vs State of Punjab.
5. 1980 AIR SC 1631, Abdul Hamid vs State of UP.
6. 2001 (6) SCC 338, Puran Vs Rambilas & Another.
7. 2002 SC 1475, Ram Govind Upadhyay Vs Sudarshan Singh and others.
8. AIR 2002 SC 2435, State of UP vs Atique Ahmad.
9. (2010) 14 SCC 496, Prasanta Kumar Sarkar Vs Ashis Chatterjee.
10. AIR 2004 SC 4267, Chaman Lal vs State of U.P.
11. 2004 SC 4258, State of Maharashtra Vs Sitaram Popat Vetal.
12. (2004) 7 SC 528, Kalyan Chandra Sarkar Vs Rajesh Ranjan.
13. 2005 (5) SCC 294, Ranjitsing Brahmjeetsing Sharma Vs State of Maharashtra and another.

14. 2009 (2) SCC 281, Vaman Narain Ghiya vs State of Rajasthan.
15. 2009 (14) SCC 286, Masroor Vs State of UP.
16. 2010 (14) SCC 496 Prasanta Kumar Sarkar vs Ashis Chatterji.
17. 2012 SCW 5243, Ash Mohammad Vs Shiv Raj Singh @ Lalla Babu and another.
18. (2012) 12 SCC 180, Kanwar Singh Meena vs State of Rajasthan and another.
19. 2013 (7) SCC 466, Nimmagadda Prasad vs CBI
20. 2014 (16) SCC 508, Neeru Yadav Vs State of U.P.
21. AIR 2017 SC 5398, Anil Kumar Yadav vs State NCT of Delhi.
22. AIR 2007 SC 5500, Nikesh Tarachand Shah Vs Union of India and another.
23. AIR 2017 SC 373, State of Telangana vs Habib Abdullah Jeelani and others.
24. 2017 (3) JKJ 315, Gulshan Begum vs State & Ors.
25. 2017 SCC 2 178, State of Bihar vs Rajbhallav
26. AIR 2018 SC 980, Dataram Singh Vs State of Uttar Pradesh and another.

27. 2018 (12) SCC 129, Anil Kumar Yadav vs State (NCT of Delhi).
28. AIR 2019 SC 1734, NIA vs Zahoor Ahmad Shah Watali.
29. (2020) 2 SCC 118, Mahipal vs Rajesh Kumar
30. 2021 SCC 2 427, Arnab Manoranjan Goswami Vs State of Maharashtra.
31. AIR 2021 SC 2011, Ramesh Bhavan Rathod Vs Hirabhai Makwana.
32. 2021 AIR SC 1950, Sonu vs Sonu Yadav and another.
33. AIR 2021 SC 4017 Harjit Singh vs Inderpreet Singh alias Inder and another.
34. 2021 SCC Online SC 511, Kumar Singh vs State of Rajasthan.
35. 2022 (9) SCC 321: Jagjeet Singh & Ors Vs Ashish Mishra, Criminal Appeal No. 632 of 2022.
36. 2022 (8) SCC 559 Deepak Yadav Vs State of UP, Criminal Appeal No. 861 of 2022.
37. 2022 (15) SCC 211, P (Ms.) vs State of Madhya Pradesh and another.
38. 2022 (15) SCC 248 Manno Lal Jaiswal vs State of UP, Criminal Appeal No. 97 of 2022.
39. 2023 SCC Online SC 347 Yashpal Singh vs State of UP, Criminal Appeal No. 812 of 2023.

40. 2023 INSC 784, State of Haryana vs Dharmaraj.

41. 2024 Live Law (SC) 392, Ajwar Vs Waseem

42. 2024 INSC 404, UOI vs Mrityunjay Kumar Singh.

21. Now, when this Court is not supposed to draw from and comment upon the merits and demerits of the case in the sense of nature and quality of the evidence led from the end of the Prosecution to prove the alleged occurrence and the offence/s related there with, this Court is also not supposed to engage itself in examining if the alleged culpable occurrence had taken place in the manner as alleged and proved as it is or would get proved in a different manner and description, further whether the guilt or innocence of the accused persons would be coming as a finding of fact or not and last but not the least if the accused person/s is/are held to be guilty of culpable act/s of omission and commission as alleged and then whether the evidence led in the case would prove the offence/s charged or otherwise. All this is in the exclusive domain of the trial Court and not for a Court which is supposed to engage itself in bail related jurisdiction especially after commencement of trial post charge framing stage.

22. Mr. Shariq J. Reyaz, Advocate appearing for the petitioners submits that the present case at its given state when the petitioners are seeking bail is fit one to earn indulgence of this Court as all the prosecution witnesses have been examined relatable to the incident and otherwise also and, therefore, there is now no question of any interference and intimidation coming from the end of the petitioners if granted bail to change the course of testimony of the prosecution side witnesses. In addition, Mr. Shariq J. Reyaz, Advocate further submits that the petitioners as accused have entered their right to lead defence evidence in which connection they need to have the liberty to come forward with their respective witnesses who in the situation of the petitioners being in custody may not volunteer themselves to come up for examination as witness in defence and further the petitioners have no criminal antecedents as disabling factor to deny them bail. It is vehemently submitted by the learned counsel for the petitioners that from the fact that the prosecution evidence came to be led in the case within a period of five years from the date of framing of charge in year 2021 is a testament to the fact that the petitioners as accused persons in the case have fully cooperated with the pace of the trial bearing an equal concern that they being

innocent ought to get speedy justice by having speedy trial without indulging in wasteful adjournments.

23. On the other hand, Mr. Z. A. Quresh, learned Sr. Advocate appearing for the complainant -Ghulam Nabi Sheikh, both through written objections as well as submissions, vehemently opposes any indulgence in the matter from this Court's end in granting bail to the petitioners on the plea that the petitioners are accused for commission of a very serious offence which is under section 302 of Indian Penal Code and that the petitioners if enlarged on bail would resort to subvert the trial of the case and also to escape from facing the final justice. Mr. Z. A. Qureshi, learned Sr. Advocate refers to the fact that the petitioners have suffered repeated rejection of their bail plea from the court below and also from this Court and, therefore, the petitioners cannot come up with old wine in new bottle like scenario in asking for grant of bail this time.

24. This Court is only obliged to give reasons as to why bail is being granted or not granted. In connection with the reasoning of granting bail to the petitioners in custody in the present case the situation goes like this that some of the accused persons who came to be granted

bail during the course of trial of the case are family members/relatives of the petitioners being undertrials still in custody and seeking bail through the medium of these bail petitions and while being on bail, said accused persons on bail did not indulge in any reported act of omission or commission whatsoever while the trial was going which could be said and reckoned to be a situation serious enough not to let the petitioners in custody on bail. This Court is bearing in the mind the aspect that all fourteen accused persons, be it on bail or in custody, have the eldest and the youngest one of the clan all booked in the case.

25. The genesis of the incident is an alleged quarrel related to a land issue leading to the occurrence of the alleged incident in which 14 accused persons allegedly got in physical scuffle with the complainant and his two sons which includes the deceased son, namely, Ishfaq Ahmed Sheikh but without any use of any weapon of offence in the alleged course of aggression and assault.

26. The narrative in the FIR as well as in the evidence led is that the accused person resorted to use of bare fists and kicks upon the person of the complainant and his two sons.

27. As this Court has already put on caveat that it is only upon appraisal of the prosecution and defence evidence led in the case that the trial court would be in a position to come up with the true genesis of the incident as to whether it occurred or not at first instance, then whether the offence/s committed in the course of quarrel involving several persons (**in rixa per plures commissa**) or one side aggression and challenge or the act of criminal trespassing with the criminal intention to do what ultimately allegedly came to be done in the case from the end of the accused persons so on and so forth.

28. All the petitioners have already suffered a course of custody (police/judicial) with effect from August-September, 2020 onwards and in that custody have spent six years in continuity.

29. There are no reported criminal antecedents of the petitioners to lend an impression to this Court that the alleged culpable act of omission or commission amounting to offence/s done by the petitioners was oriented and driven by their criminal antecedents and proclivity. Therefore, this Court is inclined to respect the underlying presumption of criminal law that an accused is presumed to be innocent till proved guilty and, as such, should not

suffer custody as sentence before conviction dawning upon him/her/them.

30. In view of the aforesaid facts and circumstances, this Court is inclined to grant bail in favour of the petitioners which is, accordingly, granted subject to the terms and conditions as may deemed fit to be settled and placed by the trial court of Principal Sessions Judge, Anantnag so as to ensure that the petitioners continue to bear the trial till pronouncement of final judgment without any scope for fleeing from the justice.

SRINAGAR
17.11.2025

Muneesh



(RAHUL BHARTI)
JUDGE

Whether the order is speaking ? Yes