

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

(Through virtual mode)

Bail App No. 182/2025 c/w Bail App No. 181/2025

- i) **Imtiyaz Ahmad Ganie**
with clubbed application ...Applicant(s)/Petitioner(s).
- ii) **Manzoor Ahmad Ganie & Ors**
Through their brother
Tasaduq Ganie.

Through: Mr. Aswad Attar, Advocate.

Vs.

Union Territory of J and K Th. SHO
P/S Achabal.

...Respondent(s)

Through: Mr. Ilyas Nazir Laway, Advocate.

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE.

ORDER

27.10.2025

1. Through the medium of the instant petitions filed under the provisions of Section 483 of Bhartiya Nagriak Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS' for short), the petitioners namely 1. Manzoor Ahmad Ganie, 2. Mohammad Afroz Ganie sons of Abdul Aziz, 3. Ganie Mubarak Ahmad Ganie S/O Mohammad Yousuf Ganie, 4. Imtiyaz Ahmad Ganie S/O Manzoor Ahmad Ganie, all residents of kanganhall, Anantnag, through their relative namely Tasaduq Hussain Ganie, have sought their enlargement on bail in case FIR No. 58/2025 registered with Police Station, Achabal under Sections 115(2), 3(5), 140(2) of Bharatiya Naya Sanhita, 2023 (hereinafter referred to as the 'BNS' for short), on the grounds, inter alia, that they have been falsely and frivolously implicated in the case FIR by distorting the actual facts of the case, when they are

innocent and have not committed the alleged offences. That their earlier bail application filed in terms of the provisions of Section 480 of BNSS has been rejected by the Court of learned Special Mobile Magistrate (Sub-Judge, Anantnag) only on the ground that during investigation of the case, the offence under Section 140(1) BNS is reported to have been substituted by the Section 140(2) BNS on the basis of the alleged statement of the victim and other witnesses, which offence is triable by a Court of Sessions and attracts the bar in terms of Section 480(1) of BNSS, without appreciating that no reasonable grounds of the involvement of the petitioners in the said offence, appear in the facts and circumstances of the case. That the prosecution case appears to be based on illusory grounds as no role of the petitioners/accused is established in the facts and circumstances of the case, which can amount to the commission of the offences of abduction and/or voluntarily causing hurt under common intention. That petitioners came to be arrested by the Achbal Police Station without being informed of any specific reasons or charges. That the alleged victim being the real complainant, is employed as an Advance Manager of J&K Bank, Anantnag, who is alleged to have been misleading the public by offering false business establishment opportunities through bank loans and once the individuals avail such loans, the former/complainant would convince them that he required the money temporarily, only to later involve them in fabricated cases to usurp the loan amounts. That petitioners are deeply rooted in the society and are men of substance possessing property at their credit. That it is highly improbable that petitioners/accused would take the alleged victim in their own vehicle to their own home with any intention to harm him. That the entire narrative presented by the Investigating Agency is fabricated and lacks any substance. That bald allegations unsupported by any credible evidence have been leveled against the petitioners. That a criminal intent would involve

concealment and anonymity and not taking the victim to one's own door-step. That a bar in terms of Section 480 BNSS for grant of bail is attracted only when there appear reasonable grounds of the involvement of the accused in the offence attracting such bar. That having regard to the quite improbable story hatched against the petitioners, the statutory bar cannot be allowed to operate. That the petitioners are not in a position to tamper with the prosecution evidence. That right to life and liberty guaranteed under Article 21 of the constitution of India is not only a fundamental right but a basic human right as well.

That it is a settled legal position that an accused is presumed to be innocent till proved guilty and the burden of proving everything essential to the establishment of guilt lies on the prosecution and, as such, bail cannot be denied in justified circumstances as a pre-trial conviction. That the main purpose of arresting an accused person is only to ensure that he remains available during investigation and if sent up for trial, remains available during the trial of the case. That when surety guarantees the presence of accused before the investigating agency/trial Court and the accused is enlarged on bail in such circumstances, he is deemed to be in custody of sureties/judicial custody. That the petitioners have been suffering in custody since August, 2025. That the petitioners have approached this Court seeking their enlargement in the case FIR in question by invoking the extraordinary powers vested with this Court in terms of the provisions of Section 483 BNSS. That the petitioner's family members have been badly suffering on account of their continued detention since last three months. That petitioners/accused shall abide by any conditions that may be imposed by this Court, if pleased to grant bail.

2. The learned counsel for the respondents Mr. Ilyas Nazir Laway, GA, resisted the bail applications through the memo of his objections on the grounds that the petitioners/accused are involved in

heinous offences of abduction, hatching of conspiracy and voluntarily causing hurt under common intention punishable under Sections 115(2), 3(5) and 140(2) of BNS arising out of case FIR No. 58/2025 registered with Police Station, Achbal Anantnag. That the Investigating Officer during investigation of the case has collected sufficient evidence to the involvement of the petitioners/accused in the commission of the aforesaid offences. That all the four accused persons are still in lock-up on judicial remand upto 03.09.2025. That petitioners are habitual criminals who have their previous criminal record also at their back. That petitioners/accused are also involved in a number of other case FIR's bearing Nos. 139/2011 under Sections 341, 325 RPC, FIR No. 126/2012 under Sections 147, 354, 341, 323, 325 RPC, FIR No. 147, 354, 341, 323, 325 RPC and FIR NO. 92/2024 under Sections 109, 1921(2), 126(2), 115, 351(3), 76 BNS. That entire evidence on record so far collected during the course of investigation is self-explanatory, which suggests in explicit terms involvement of the above named accused in the offences leveled against them. That the offences committed by the petitioners are heinous and grave in nature besides being non-bailable in character owing to which fact they cannot claim bail as a matter of right., which otherwise justifies rejection. That the offences committed by the petitioners/accused are running harsh against larger public interest, as such, a balance deserves to be struck between the individual interest and public interest. That it is a settled legal position that whenever the individual interest and public interest may get pitted with each other, the individual interest must give way to the larger public interest, on account of which fact bail deserves to be rejected. That since the case is still at the investigation stage, as such, the admission of the accused on bail will cause serious impediments in the smooth recording of statements of the witnesses. That there is every apprehension of petitioners absconding at the trial in case of their enlargement on bail. That the

applications filed by the petitioners are devoid of any ground much less a convincing one, as such, same deserve to be rejected. That the petitioners have agitated false and fabricated grounds in order to defeat the process of law for undue advantage. That the petitioners have not approached the Court with clean hands and have instead suppressed the material facts before this Court.

3. I have heard he learned counsel for both the sides in the matter.

4. The learned counsel for the petitioners/accused while reiterating his stand already taken in the bail petitions contended that petitioners are innocent and have not committed the alleged offences. That they have been falsely and frivolously implicated in the case FIR by manipulating and distorting the actual facts. He contended that a reasonable suspicion appears to be made out even in the estimation of an ordinary prudent man in the facts and circumstances of the case as it is quite improbable that petitioners will take the victim to their own home under a criminal intention. That a criminal intention is manifested by the designs of secrecy and anonymity.

The learned counsel further contended that the alleged victim being a Bank Manager is alleged to have been misleading the public by offering false business establishment opportunities through bank loans. That once the individuals availed the loans, the victim/complainant would convince them that he required the money temporarily only to later involve them in fabricated cases to usurp the loan amounts.

The learned counsel submitted that the liberty of an individual which is too precious a value of our constitutional system cannot be curtailed by mere labeling of offences without there being any concrete and supporting evidence basing the same.

He further contended that the alleged victims i.e Bank Manager has in his own statement recoded before the Magistrate admitted that the petitioners/accused took him to their home and asked him as to why he has not approved their loan cases as they are badly suffering for having incurred huge loss due to inaction on his part.

The learned counsel further submitted that the Police Station concerned basically registered the FIR in question under Section 140(1) and the substitution of the said offence by Section 140(2) BNS clearly appears to be an afterthought intended to see the petitioners/accused behind the bars. He contended that there apparently does not appear any reasonable grounds for involvement of the petitioners in the offence under Section 140(2) BNS. The learned counsel further contended that the learned Magistrate while rejecting the earlier bail applications of the petitioners has been influenced by the leveling of allegations *inter alia* under Section 140(2) BNS against them without appreciating the real fact that there are no reasonable grounds of their involvement in the said offence. He further contended that the petitioners are the members of same family which fact presents a convincing ground to disbelieve the alleged intention of the petitioners/accused that they under conspiracy abducted the victim with the intention to kill him. He further contended that the conduct of the alleged victim to the extent of his availability in the area, at late evening hours i.e., 20:30 Hrs on 29.07.2025, itself questions the prosecution version of the case. The learned counsel further contended that the petitioners have approached this Court by invoking its extraordinary powers vested under the provisions of Section 483 of BNSS. That this Court under the said provisions of the Sanhita is fully competent to grant bail in the circumstances where there are justified reasons for doing so in respect of the individuals who have been denied bail by the Courts below.

The learned counsel submitted that petitioners are ready to abide by any conditions as to the furnishing of surety and personal bonds etc. in case they are admitted to bail in the case FIR in question.

5. Per contra, the learned UT counsel while reiterating his stand taken by him in his written objections contended that petitioners do not deserve the concession of bail as they are involved in heinous and non-bailable offences of anti-social nature. That the act committed by the petitioners have made the common citizens scared and panic. That the petitioners have dared to abduct a Bank Manager with the intention to kill him and in the process have inflicted injuries upon him. He contended that the offence punishable under Section 140(2) BNS carries a sentence of death or imprisonment for life thus attracting the bar under Section 480(1)(i) of BNSS.

The learned counsel further contended that petitioners are habitual criminals who are involved in series of case FIR's registered against them during last few years. The learned GA further contended that having regard to the character of the petitioners/accused, there is every apprehension that they may misuse the concession of bail if granted in their favour, by tampering with the prosecution evidence and by absconding at the trial.

6. The accusation against the petitioners as per the case FIR No.58/2025 of PS Achbal is that on 29.07.2025, they stopped the vehicle of one Saqib Ahmad Najar S/O. Gulzar Ahmad Najar Manager of Jammu and Kashmir Bank, Branch Tilwani, Achbal at around 20.00Hrs , dragged him out, physically assaulted him and abducted him along with his vehicle to some unknown location with intention to cause him harm thereby creating an atmosphere of fear in the locality.

7. It is revealed from the perusal of the prosecution case that on 29.07.2025, the complainant namely Rahil Yaqoob Sheikh accompanied with Showkat Ahmad Naikoo lodged a written report with the Police Station Achbal at 9.00 PM to the effect that they, on that date, closed the bank premises at about 7:30PM and proceeded towards their respective homes. That Shri. Saqib Ahmad Najar S/O Gulzar Ahmad Najar also boarded in his own vehicle (Swift. Red Colour) bearing No. JK03N 1911 and proceeded towards his home. That they as usual called the said Saqib Ahmad Najar at about 8PM to verify as to whether he has comfortably reached home, but he did not pickup the phone and in the meanwhile, his family members also contacted us. That about 9:00PM it was learnt from some reliable sources that said Saqib Ahmad Najar had been stopped by some unknown persons at village kangna hall Achbal Anantnag and after getting him down from his vehicle beat him, whereafter he has been taken to some unknown place with the intention to kill him. That on receipt of the said report, case FIR No. 58/2025 came to be registered under Section 140(1) BNS and investigation started. That during investigation IO reaches the spot and prepares the site plan. That during investigation of the case the alleged abductee-Advance Manager, Jammu and Kashmir Bank namely Saqib Ahmad Najar came to be recovered from the residential house of accused Manzoor Ahmad Ganie S/O Abdul Aziz Ganie R/O Kangna Hall. That the vehicle of the alleged abductee bearing No. JK03N 1911 also came to be recovered from the compound of the said accused.

That motorcycle under Chassis No.MB2HAR059H4-DO1468 without documents was also seized and the offences punishable under Sections 50/177, 39/192, 146/196 MV Act were also added in the case FIR. That the injured abductee was referred to hospital for his treatment and receipt of medical opinion. That offence under Section 115(2) BNSS was added in the case FIR on the receipt of the medical opinion. That offence under Section 3(5)

was also added in the FIR upon establishment of the common intention of the petitioners/accused in the commission of the alleged crime. That the statements of the alleged victim and other witnesses came to be recorded during investigation of the case in terms of Section 183 BNSS on the basis of which offence under Section 140(1) BNS was substituted by the offence under Section 140(2) BNS. That commission of the offences punishable under Sections 140(2), 238, 3(5), 115(2) BNS 50/177, 39/192, 146/196 MV Act came to be established against the petitioners/accused who were arrested. The final report/challan arising out of the case FIR in question is reported to have been presented before the competent court for trial. The petitioners/accused are accordingly in custody in the case FIR as under-trials.

8. I have perused the instant bail applications filed on behalf of the petitioners, the objections filed in rebuttal by the learned. GA, the scanned copy of the final police report/challan and the documents enclosed with the same, called from the trial court pursuant to the order dated 14.10.2025 of this Court.

9. I have also given my thoughtful consideration to the rival arguments advanced on both the sides.

10. Keeping in view the aforementioned 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 petitioners are admitted to bail in the case FIR in question subject to some reasonable terms and conditions that may take care of the apprehensions of the prosecution.

11. 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 absconding at the trial.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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”.

17. It has been laid down by the Hon’ble Supreme Court in

Sanjay Chandra vs. Central Bureau of Investigation AIR 2012

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.”

18. 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.”*

19. 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.

20. It is very needful to mention that as per the prosecution case, the petitioners/accused stand involved besides other offences in the offence punishable under Section 140(2) BNS, which carries a punishment of death or imprisonment for life along with the liability for fine.

21. 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.

22. A mere labeling of an offense carrying punishment of death or imprisonment for life in alternative is not sufficient to attract the bar imposed by the provisions of Section 480(1)(i) of the BNSS corresponding to Section 437(1) of the Code and a criminal Court before considering to invoke the aforesaid bar is needed to be fully satisfied that there appear reasonable grounds for believing that the accused is guilty of an offence punishable with death or imprisonment for life.

23. The learned counsel for the petitioners/accused during his arguments *inter alia*, contended, that the case FIR in question was initially registered under Section 140(1) BNS and subsequently during investigation the said clause (1) of the offence was replaced by Clause (2) providing for death or life imprisonment, only to see the petitioners behind the bars and to make them unable to seek their enlargement.

24. The learned counsel also contended during his arguments that even if the prosecution version of the case and especially the statement of the alleged abductee/victim is supposed to be true for arguments sake, yet, the commission of the offence in terms of provisions of Section 140(2) BNS does not appear to be made out. The learned counsel during his arguments invited the attention of this Court towards the phraseology of Clause 2 of Section 140 BNS to support his contention that the alleged commission of the offense punishable under Section 140(2) BNS does not appear to be made out even in the light of the allegations of the prosecution.

25. A criminal court while recording his satisfaction as to whether there appear “reasonable grounds” of involvement of an accused in the commission of an offense punishable with, “death or imprisonment for life” attracting the bar in terms of provisions of Section 480(1)(i) BNSS has to use his discretion in a judicious manner so that no miscarriage of justice happens either by grant of bail or by denial of the same.

The “reasonable grounds” of involvement can be inferred from the facts and circumstances of the case especially, the nature of the evidence. The Court is supposed to consider the broader probabilities to reach its supposition regarding the existence of reasonable grounds of involvement of the accused.

The words “reasonable grounds” cannot be read to mean proved as used in Bharatiya Sakshya Adhiniyam. Such an

interpretation would in my opinion set at naught the power vested in a court to grant bail pending trial.

The expression “reasonable grounds” would obviously mean something more than mere suspicion and conjectures and something less than proof. It would necessarily mean such grounds or material that would *prima facie* enable a person of ordinary prudence to believe that the accused is or is not guilty.

It is no doubt true that the object of the legislation of such disabling provisions is to prevent the offenders from immediately granting bail in heinous offences. In this view of the matter, the court is required to examine the material placed before it and then to arrive at a conclusion that there exist “reasonable grounds” to believe that accused is guilty or not guilty

The “reasonable grounds” would vary from case to case and from one accused to another. What may be reasonable in one case may not be so in another and therefore the words “reasonable grounds” cannot, on account of a discretion vested in the court, be put into a straight-jacket. Each case would have to be dealt with and examined on its own facts and decided keeping in view the mandate of law. The consideration at the time of taking up of the bail application for disposal is different from the consideration adopted at the end of the trial for holding an accused guilty or not guilty. In considering an application for bail, court is not required to conduct a preliminary trial. The Courts while deciding bail applications will be traversing beyond their ambit and would be exceeding their limit of functions if they engage themselves in discovering the guilt or innocence of the accused which can only be determined at the trial stage. The courts should not go at a tangent in order to find out the possible excuses for grant bail. Whether there are “reasonable grounds” or not is the question which must be decided judicially, that is to say there should be some tangible evidence on which the Court might come to the conclusion that if unrebutted, the accused

might be convicted. Whether there are reasonable grounds for believing that a person is guilty of such an offence depends on what evidence is offered by the prosecution to the charge against him.

In order to come to the conclusion, that a person is guilty, the Court must consider the evidence which if unrebutted may lead to conclusion that the charge against him stands proved and cannot unjustifiably hold that there are “reasonable grounds” for believing that he is guilty. It is a settled position of law that the real question whether there are reasonable grounds for believing that a person is guilty of offences attracting bar under Section 480(1)(i) BNSS, depends upon what evidence is offered by the prosecution to prove the charge against him. While reaching such conclusion, the Court must consider the nature and character of evidence against him.

26. Without any intention of commenting on the merits of the case, this Court in the facts and circumstances of the case, especially having regard to the evidence collected during investigation, is of the opinion, for the limited purpose of disposal of these bail applications that there appear no reasonable grounds of involvement of the petitioners in the offence punishable under Section 140 Clause 2 BNS.

27. 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.

28. 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.

29. 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.”

30. 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.”

31. 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.”

32. 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.”

33. 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.”

34. This Court is of the opinion that a petition in terms of Section 483 BNSS corresponding to Section 439 of the repealed Code shall normally be filed, if needed, by either side as a successive one after the disposal of the first application by a competent court. Although there is no bar under the aforesaid provisions of law contained under Section 483 BNSS in directly approaching this Court yet fairness requires that the competent court of first level should not be bypassed. Practice of directly approaching a High Court by invoking the provisions of Section 483 BNSS is likely to unnecessarily burden this Court with such matters which can in the first instance be addressed under law by the competent Sessions Court. It is being observed that generally the advocates practising in the High Courts resort to such practice of directly approaching this Court for their own convenience being unmindful of the petitioner's losing one forum. This Court is also of the opinion that power of a High Court and of the court of Sessions under Section 483 BNSS is not unlimited but the restrictions figuring under the provisions of the Section 480 BNSS corresponding to Section 437 of the repealed Code are deemed to be imported in the former (Section 483 BNSS). A compelling justifiable ground or a circumstance should be made out for directly approaching the High Court or a court of Sessions under Section 483 BNSS for grant of bail.

35. The petitioners ought to have, in the first instance approached the Court of learned Sessions Judge concerned by invoking the powers of the said Court under Section 483 BNSS after being aggrieved for the order of rejection of bail dated 09.08.2025 by the learned Magistrate.

36. It is very needful to mention that the words “...or as brought before the Court other than the High Court or the Court of Sessions, he may be released on bail...” occurring in Section 480 BNS corresponding to Section 437 of the repealed Code, read with the

provisions of Section 483 guaranteeing the special powers of High Court or Court of Session need to be read and understood in a logical way so that the law on the doctrine of bail is not rendered meaningless. Clear to say the provisions of Section 480 of BNSS need to be imported while considering the bail matter in terms of the provisions of Section 483 BNSS. An application when filed by invoking the provisions of Section 483 BNSS corresponding to Section 439 of the repealed Code, as a successive one especially when a Court of Magistrate or even a Sessions Court under some special statute declines bail in the first instance, has the trapings of a revision. Under the provisions of Section 483 BNSS, the Court of Sessions or a High Court can exercise its powers for granting bail to an accused who stands denied the said concession from Courts below or can cancel the said concession if already granted from the Courts below.

37. For the foregoing discussion, the instant bail applications are allowed and the petitioners namely Manzoor Ahmad Ganie, Mohammad Afroz Ganie sons of Abdul Aziz Ganie, Mubarak Ahmad Ganie S/o Mohammad Yousuf Ganie, Imtiyaz Ahmad Ganie S/o Manzoor Ahmad Ganie are admitted to bail in case FIR No. 58/2025 subject to their furnishing of surety and personal bonds to the tune of Rs. 1 lakh each (surety bond of Rs. 1 lakh to be furnished for each petitioner/accused by two sureties from amongst his near relatives each liable to be extent of Rs. 50,000/, respectively to the satisfaction of the learned Registrar Judicial of this Court and the Superintendent of Jail concerned.

38. This order shall, however, be subject to following conditions.

1. The petitioners/accused shall remain punctual at the trial of the case.
2. 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.
3. That the petitioners/accused shall not leave the limits of the UT of Jammu and Kashmir without the prior permission of the learned Trial Court.
4. That the petitioners/accused shall not repeat the commission of any crime.
5. That the petitioners/accused shall not confront the alleged victim/abductee in the course of his travel to and from for attending his official business.

39. In case the requisite surety bonds are furnished to the satisfaction of the learned Registrar Judicial and duly attested, a formal release order shall be issued by the Registry Court directing the release of the petitioners/accused in the instant case FIR No. 58/2025 of PS Achbal from the place of their lodgment subject to their(petitioners/accused) furnishing personal bonds in the amount of Rs. 1/- lakhs each to the satisfaction of the Superintendent of the jail concerned.

40. The learned Trial Court shall be fully competent to proceed against the petitioners/accused in terms of the provisions of Sections 491 & 492 of BNSS, in the event of violation of any of the bail conditions.

41. 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. The learned trial Court shall proceed on the trial of the case in accordance with the law while being uninfluenced with any observation of this Court

made in this order for the limited purpose of addressal of bail applications.

42. Disposed of.

(MOHD YOUSUF WANI)
JUDGE

Jammu:
27.10.2025
“Shahid Manzoor”

Whether the order is speaking	?	Yes
Whether approved for reporting	?	Yes
		(only in law journals/books)

