

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

Bail App 222/2025

NAZIR AHMAD WANI AND ORS

...Appellant(s)/Petitioner(s)

Through: Mr. Mohammad Ashraf Malik, Advocate with
Mr. Salfi Izhar, Advocate

Vs.

UNION TERRITORY OF J AND K TH.SHO

P/S KOKERNAG (HOME) ANR

...Respondent(s)

Through: Mr. Ilyas Laway, GA for R-1
Mr. Uthman Gani, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER

26.11.2025

1. Mr. Uthman, Gani appearing for respondent no. 2 submits that he adopts the objections filed by respondent no.1. His statement is taken on record.
2. Heard learned counsel for the parties and perused the record on file.
3. Applicants are in judicial custody, have been arrested in connection with case FIR No. 104/2025, registered with Police Station, Kokernag, for offences punishable under Sections 126(2), 109, 351(2) and 238 of Bhartiya Nyaya Sanhita. Arrest has been made on 21.09.2025.
4. Initially, when application made by applicants for grant of bail before Judicial Magistrate First Class (Sub Judge) (JMFC), Vailoo, was returned, they consequent thereupon filed bail application before Principal Sessions Judge, Anantnag on the ground of having been falsely implicated and not committed any offence.
5. Learned Trial Court rejected the bail application on the ground that investigation was not complete and offences carry punishment of imprisonment for 10 years or life, depending upon the nature of offence. On rejection of bail application, applicants have approached this Court with instant application seeking bail on the following grounds:

“(i) That impugned order is erroneous as it applies Section 480 of the BNSS as a complete bar, failing to recognize it as a discretionary power that must be exercised judiciously based on the facts of the case, not mechanically.

(ii) That court below gravely erred by using the investigations incompleteness and the absence of a final medical report to justify detention, thereby punishing the petitioners for the prosecution's delay and violating their right to liberty under Article 21 of the Constitution.

(iii) The finding of a "reasonable apprehension" that the petitioners will tamper with evidence or influence witnesses is purely speculative, is not substantiated by any evidence on record, and ignores their deep roots in the community and offer to comply with stringent conditions.

(iv) The learned Sessions Judge failed to correctly apply the fundamental principle of "bail, not jail" and the presumption of innocence, resulting in a punitive pre-trial incarceration that is not justified when the accused's presence can be secured by other means.

(v) The impugned order unjustly disregards the severe personal hardship caused by the incarceration of all family breadwinners, including a 61-year-old man, leaving their dependents in a precarious state, which is a relevant consideration for a compassionate bail grant.

(vi) The reliance on the judgment in Nagar Singh v. State of J&K is misplaced, as the caution against granting bail routinely was misapplied to justify a routine denial of bail based solely on the nature of the accusation, without a holistic analysis of other crucial factors.

(vii) The continued detention of the petitioners, in the absence of a compelling case made out by the prosecution, constitutes a violation of their fundamental right to life and personal liberty as guaranteed under Article 21 of the Constitution of India.

(viii) That the daughter of the petitioner no. 1 and sister of petitioner no. 2 and 3 is going to get married on 4th November 2025 proof whereof is attached as annexure-VII. Since the petitioners are the only male folk in the family, it would be impossible to conduct the marriage ceremony without the presence of the petitioners. As such, concession of bail is also sought on humanitarian grounds.

(ix) That the alleged injuries are not grievous at all and as such do not merit invoking of offence under section 109 of BNS. In fact, the alleged victim/complainant has been discharged ever since and is no longer affected by such injury."

6. Objections have been filed.

7. It is being admitted by counsel of the respondents that the investigation in the case is complete and Chargesheet has been laid before the Trial court.

8. Applicants are in custody since 21.09.2025. So far as the custody of the applicants are concerned, as offence does not carry punishment of death,

therefore, bar as provided under the provisions of Section 480 BNSS would not attract. Applicants have a right to defend and have also right to liberty. Their liberty cannot be curtailed at a stage when an offence is yet to be established. They are required to be given fair chance to defend their case inasmuch as they have been in continued detention.

9. Application is accordingly allowed and applicants are admitted to bail on their furnishing bail bond to the tune of Rs. 50,000/- each to the satisfaction of Registrar Judicial, with surety bond of the like amount to the satisfaction of Incharge/Superintendent, Jail concerned on the following conditions: -

- a. Applicants shall remain present before the Trial/Sessions Court on every date of hearing;
- b. Applicants shall not directly or indirectly make any inducement, threat or promise to any person(s) acquainted with the facts of the case so as to dissuade him/them from disclosing such facts to the Court or to any Police Officer, as the case may be;
- c. Applicants shall not leave territorial jurisdiction of the court of Principal Sessions Judge, Anantnag, without proper permission of the said Court;
- d. Applicants shall not tamper with the evidence or witnesses in any manner and shall not be a source of embarrassment and harassment to any of the witnesses in any manner;
- e. Applicants shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
- f. Applicants shall not commit an offence similar to the offence of which they are accused, or suspects, of the commission of which they are suspected.

10. Disposed of.

(VINOD CHATTERJI KOUL)
JUDGE

Srinagar
26.11.2025.
"Imtiyaz"