

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Bail App No.108/2026
c/w
Bail App No. 90/2026
Bail App No. 100/2026

Date of pronouncement: 15.06.2026
Date of uploading: 15.06.2026

1. Lal Hussain and anr.
2. Ghulam Kadar
3. Sheru and ors.

...Petitioners

Through: Mr. Karman Singh Johal, Adv.

Vs

UT of J&K & ors.

...Respondent(s)

Through: Mr. Sumit Bhatia, GA
Mr. S. M. Wajahat, Adv.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

ORDER

1. By this common order, Bail App Nos.108/2026 and 100/2026 for pre-arrest bail, under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and Bail App No.90/2026, for regular bail, under Section 483 BNSS are proposed to be disposed of as they arise out of same FIR No.09/2026 dated 29.01.2026, registered with Police Station Ramnagar, District Udhampur, for offences punishable under Sections 87, 64, 191(2) and 61(2) BNS and allied offences added during investigation.

2. The prosecution case, in brief, is that private respondent, the prosecutrix, aged about 19 years, was abducted from Ramnagar, taken to Kathua and was forcibly married against her will to the applicant/accused, Ghulam Kadar. She was wrongfully confined and subjected to repeated sexual intercourse without her consent. On her statement, FIR came to be registered and investigation commenced.
3. Petitioners seek their enlargement primarily on the ground that entire prosecution story is contradicted by contemporaneous material placed on record before this court in earlier proceedings. It is contended that victim, after attaining the age of majority voluntarily married accused Ghulam Kadar and approached this Court by way of WP(C) No. 129 of 2026 for protection of the wedlock from the relatives opposed to it.
4. It is contention of the petitioners that sworn affidavits bearing signatures/thumb impressions of the prosecutrix/victim formed part of the writ proceedings wherein she unequivocally asserted that she married accused Ghulam Kadar of her free will. It is contended that since filing of the said writ petition preceded registration of the FIR, it constitutes contemporaneous conduct having considerable evidentiary significance. However, when matter came before this Court and victim and accused Ghulam Kadar were produced, pursuant to the judicial orders; the prosecutrix in her statement before Registrar Judicial of this Court stated that she did not wish to live either with accused Ghulam Kadar or with her parents and intended to marry a person of her own choice. It is emphasized that in the said statement no allegation of rape or sexual assault was leveled by the prosecutrix against accused Ghulam Kadar. According to the petitioners, the allegation of rape surfaced only

subsequently during investigation and constitutes a material improvement over the version earlier placed before this Court. It is contended that petitioners seeking anticipatory bail are either parents, grandparents or close relatives of the alleged victim and no overt act of violence or sexual assault is attributed to them. They are permanent residents of the area and have no criminal antecedents. They were earlier granted interim protection by the trial court and during the subsistence of such protection, there is no allegation that they attempted to influence witnesses, tamper with evidence or obstruct the investigation.

5. *Per contra*, learned counsels appearing for the respondents, have opposed the bail pleas, contending that prosecutrix has categorically stated before the investigating agency and in her statement recorded under Section 183 BNSS that she was forcibly married and subjected to sexual assault. It is submitted that since offences alleged are grave in nature, applicants do not deserve the concession of bail.
6. I have heard learned counsels for the parties and considered the record.
7. The power to grant bail is one of the most important facets of the constitutional guarantee of personal liberty. Article 21 of the Constitution mandates that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Though allegations in the present case are undoubtedly serious, the seriousness of accusation alone cannot be treated as conclusive for denial of bail.
8. Hon'ble Supreme Court has repeatedly emphasized that object of bail is to secure the attendance of the accused during investigation and trial and not to impose pre-trial punishment.

9. In ***Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22**, Honb'le Supreme Court has reiterated that a fundamental postulate of criminal jurisprudence is the presumption of innocence and that grant of bail is a general rule whereas refusal is an exception.
10. In ***Satender Kumar Antil v. CBI*, (2022) 10 SCC 51**, Honb'le Supreme Court again emphasized that since unnecessary arrests and prolonged incarceration before conviction are inconsistent with the constitutional values, courts must adopt a liberty-oriented approach while dealing with the bail matters.
11. Insofar as anticipatory bail is concerned, Constitution Bench of the Apex Court in ***Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1** held that power to grant anticipatory bail is an important safeguard against arbitrary arrest and that courts must balance the individual's right to liberty with the interest of investigation.
12. The settled principles emerging from the aforesaid authorities may, thus, be summarized as under:

- (i) Bail is the rule and jail is the exception;
- (ii) Presumption of innocence continues till conviction;
- (iii) Seriousness of accusation is a relevant but not the sole consideration;
- (iv) Court must assess the necessity of custodial detention; and
- (v) Propensity on the part of the accused to abscond, tamper with the evidence or influence the witnesses are important considerations;

13. Applying the aforesaid principles to the facts of the present case, this Court finds that matter presents peculiar circumstances which distinguishes it from ordinary cases involving allegations of abduction and sexual assault.

14. The record reveals that prior to the registration of the FIR, a joint writ petition bearing WP(C) No.129/2026 came to be instituted in this Court for the protection of the marriage of the prosecutrix and accused Ghulam Kadar. Significantly, victim was arrayed as one of the petitioners in the said proceedings and an affidavit was sworn by her in support of the plea that she married accused Ghulam Kadar of her own volition. The prosecutrix, pertinently, has not come forward with her denial in these petitions. At this stage, this Court is not required to pronounce upon the genuineness or legal effect of the said affidavit, however, their existence on the record, preceding the FIR constitutes a circumstance which cannot be brushed aside while considering the issue of bail.

15. The chronology of events assumes significance. The marriage is stated to have been solemnized on 19.01.2026. The protection petition came to be filed on 28.01.2026. The FIR came to be registered on 29.01.2026. Thus, before the criminal machinery was set in motion, material had already been placed before this Court suggesting that parties had approached the Court asserting that marriage had been contracted voluntarily and that there existed opposition from certain relatives.

16. The prosecution relies heavily upon the statements subsequently made by the victim before the investigating agency, before the Magistrate under Section 183 BNSS and before Registrar Judicial of this Court. Undoubtedly, those statements support the prosecution case. However, what is equally undeniable is that record discloses substantial inconsistencies and competing narratives.

17. This Court notices that statement recorded before learned Registrar Judicial pursuant to judicial directions primarily indicates that victim did not wish to reside with accused Ghulam Kadar and that she considered the marriage to have been performed against her wishes. The statement, however, does not appear to contain allegations of repeated rape which subsequently came to form a substantial part of the prosecution case.

18. Whether such omission is inconsequential, whether it amounts to a material contradiction, or whether it stands satisfactorily explained by the prosecution are all questions which can be examined during the trial only after evidence is adduced by both sides. At the stage of bail, Court is not expected to conduct a mini-trial or evaluate probative value of rival pieces of evidence. This principle has been repeatedly recognized by Hon'ble Supreme Court.

19. The prosecution has argued that allegations are grave and therefore petitioners do not deserve bail. There can be no quarrel with the proposition that allegations involving sexual offences are serious and deserve sensitive treatment. However, gravity of offence, though important, cannot eclipse other relevant considerations.

20. Hon'ble Supreme Court in ***Prasanta Kumar Sarkar v. Ashis Chatterjee***, (2010) 14 SCC 496 identified the relevant factors governing grant of bail, namely:

- (a) existence of a prima facie case;
- (b) nature and gravity of accusation;
- (c) severity of punishment in the event of conviction;
- (d) danger of absconding;
- (e) character, behaviour and standing of accused;

- (f) likelihood of repetition of offence;
- (g) reasonable apprehension of witness tampering; and
- (h) larger interests of justice.

21. Examining the present matter on the touchstone of the aforesaid principles, this Court finds that petitioners are permanent residents of District Udhampur. Their addresses and identities are not in dispute. No material has been brought on record to suggest that they have attempted to evade the process of law. The prosecution has also not placed any material demonstrating previous criminal antecedents of any of the petitioners. The applicants in Bail App Nos.108/2026 and 100/2026 had remained under interim protection granted by learned Sessions Court. Significantly, no allegation has been made that they misused such protection, threatened witnesses, destroyed evidence or obstructed investigation. This circumstance assumes relevance because conduct during the period of interim protection often furnishes a useful indicator regarding the likelihood of misuse of liberty. The investigation, as per the status report, has substantially progressed. Statements of material witnesses have already been recorded. The victim's statement under Section 183 BNSS stands recorded. Medical examination has been conducted. The prosecution has not demonstrated before this Court what specific purpose would now be served by custodial detention of the petitioners. Mere assertion that custodial interrogation is necessary cannot be accepted in the absence of concrete reasons, particularly when substantial investigation has already been completed.

22. Insofar as accused Ghulam Kadar is concerned, although allegations against him are more direct, Court cannot ignore the peculiar factual matrix

noticed hereinabove, namely the prior protection proceedings, the affidavits forming part of the record and the existence of competing versions emanating from the material placed before the Court.

23. The Court is conscious that observations on merits may prejudice either side and therefore refrains from commenting further on the evidentiary worth of the rival versions. Nevertheless, Court is satisfied that material presently available does not justify indefinite pre-trial incarceration, particularly when prosecution has failed to demonstrate a real likelihood of abscondence, witness intimidation or obstruction of justice. Adequate safeguards can be imposed to secure the interests of investigation and trial.

24. Liberty once lost cannot be easily restored. The constitutional courts are required to maintain a delicate balance between societal interests and individual freedom. In the facts of the present case, that balance would be appropriately maintained by enlarging the petitioners on bail subject to stringent conditions.

25. Accordingly, this Court is of the considered view that petitioners have succeeded in making out a case for grant of anticipatory bail in Bail App Nos.108/2026 and 100/2026 and regular bail in Bail App No.90/2026. Consequently, they are allowed subject to the conditions enumerated hereinafter.

26. In the event of arrest of the petitioners in Bail App Nos.108/2026 and 100/2026, they shall be released on bail on furnishing personal bonds in the sum of Rs.1.00 lac each with one surety of the like amount to the satisfaction of the Investigating Officer. Petitioner Ghulam Kadar in Bail App No.90/2026 shall be released on regular bail upon furnishing bail bonds in the sum of

Rs.1.00 lac with one surety of the like amount to the satisfaction of the trial Court. The grant of bail shall remain subject to the following conditions that:

- (i) petitioners shall not leave territorial jurisdiction of the trial Court without prior permission;
- (ii) they shall appear before the Investigating Officer and trial Court as and when required and shall abide by the conditions of the bail bonds;
- (iii) they shall not commit any offence similar to the offence of which they are accused;
- (iv) they shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing those facts before the Court or the investigating agency; and
- (v) they shall not tamper with the prosecution evidence in any manner whatsoever.
- (vi) Any violation of the aforesaid conditions shall entitle the prosecution to seek cancellation of bail in accordance with law.

27. It is made clear that observations made herein are only for the purpose of disposal of the present bail applications and shall not influence the investigation, trial or any other proceedings arising out of the FIR in question.

28. With the aforesaid direction, all these bail applications stand disposed of.

(Rajesh Sekhri)
Judge

Jammu
15.06.2026
Paramjeet

Whether the judgment is speaking or not?	Yes
Whether the judgment is reportable or not?	Yes