

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Bail App No. 114/2026

Reserved on: 31.07.2026

Pronounced on: 20.08.2026

Uploaded on: 21.08.2026

Operative part or full judgment : Full

Shakeel Ahmed

...Petitioner(s)

S/O Abdul Rashid

R/O Jamaslan, Tehsil Mahore

District Reasi

A/P District Jail, Amphalla, Jammu.

Through: Mr. Arshad Hussain, Adv.

Vs.

1. UT of J&K through SHO

Police Station, Domana.

2. A minor through his father

Arshad Hussain Tantray

S/O Gh. Hussain Tantray

R/O Naropura Watnar,

Kokarnag, Hangulgund,

District Anantnag.

Respondent(s)

Through: Mr. P.D. Singh, Dy. AG for R-1.
Mr. Idrees Saleem Dar, Adv. and
Mr. Gohar Ali Manhas, Adv. for R-2.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. The present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, seeking grant of regular bail to the petitioner in a case pending before the Fast Track Court (POCSO Cases), Jammu, arising out of FIR No. 42/2025 dated 09.02.2025 registered at Police Station, Domana,

Jammu under Section 377 IPC read with Sections 5 and 6 of the POCSO Act.

2. Petitioner having been unsuccessful in his plea before the trial court, seeks grant of bail, on the grounds that out of eleven prosecution witnesses, five prosecution witnesses including the alleged victim and his father have already been examined before the trial court, as such, after examination of material witnesses and continued incarceration of the petitioner, he is entitled to bail; that the statements of the victim and his father were recorded before the learned Judicial Magistrate, where both of them have made statements that the alleged occurrence had taken place during the period from November/December, 2020 till February, 2021, thus, pertains to a period several years prior to the registration of the FIR, as such, the inordinate and unexplained delay in lodging the FIR creates serious doubts regarding the genuineness and truthfulness of the prosecution story; that the star witnesses of the prosecution, namely, the victim and his father have already been examined and there is no possibility of the petitioner influencing or intimidating them; that there is no likelihood of the petitioner absconding or fleeing from justice, in the event of grant of bail; that continued detention of the petitioner would amount to pre-trial punishment and would be violative of the mandate of Article 21 of the Constitution of India. Finally, it has been prayed that the regular bail be granted to the petitioner.

3. Pursuant to notice, objections have been filed by the respondent-UT of J&K, asserting therein that grant of bail to the petitioner-accused before all the material witnesses in the case are examined by the trial court, would have adverse effect on the chances of fair trial and the petitioner may misuse his liberty to tamper with the prosecution evidence; that keeping in view the facts and circumstances of the background of the impugned FIR, based on zero FIR lodged in Kashmir, registered on the complaint of minor son of Arshad Hussain Tantray R/O Bangalgund, Kokernag, impugned FIR stood registered against the petitioner, a Maulvi, allegedly threatened, intimidated and took him to a separate room inside the mosque and committed forcible sexual assault upon him continuously for 21 days; that during the investigation, offences punishable under Section 377 of the IPC and sections 4 and 6 of the POCSO Act, were found to have been established against the petitioner. Finally, it has been prayed that the application filed by the petitioner for seeking bail be rejected.
4. Respondent No. 2, through his father, has also filed objections, asserting therein that the trial court did not dismiss the bail application on a mere technicality but after a profound analysis of the societal impact, the trauma inflicted upon the victim and the statutory guidelines in POCSO matters; that the trial court observed that such crimes destroy the entire psychology of a person and push him/her into deep emotional crisis; that the victim has deposed before the court fully supporting the

prosecution story and also identified the petitioner-accused in open court; that the trial court correctly observed that release of the accused at this stage, when the victim's testimony is resolute, would shatter the faith of the common man in the criminal justice system; that the petitioner has failed to place any material on record to rebut the allegations leveled against him. Finally, it has been prayed that the bail application of the petitioner be dismissed.

5. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in a case alleging that the victim having been sexually ravished in the year 2023 regarding which the FIR was lodged after an inordinate delay in the year 2025. Since the date of his arrest i.e., 18.04.2025, the petitioner has been in continuous incarceration in the aforesaid case against his cherished fundamental right enshrined in Article 21 of the Constitution of India dealing with liberty; that material witnesses have already been examined and only some formal witnesses are required to be examined in the case; that the trial court has rejected the plea for grant of bail in favour of the petitioner on flimsy grounds and that the petitioner is entitled to be admitted to bail in this case for the reasons that he was implicated in a case, which was registered after an inordinate delay of more than two years and prayed that the petitioner be admitted to bail.
6. Learned Dy. AG while opposing the grant of bail has argued that the petitioner has been charged for the commission of offences punishable under sections 4 and 6 of the POCSO Act and there

is a presumption with regard to culpability of the accused in such cases. He further argued that it is the petitioner's contention that most of the witnesses have already been examined, as such, the petitioner cannot seek grant of bail on the ground of long incarceration in a case that too having serious offences, as such, in view of the gravity of the offences of which the petitioner has been charged, his plea for grant of bail be rejected.

7. Learned counsel for the respondent No. 2-victim has argued that the victim was a child, who used to go to the petitioner, who was a religious teacher in a mosque at Lower Bagani Talab, Raipur Domana, where he had come along with his family in the winters of 2023 and that his family had sent him along with his brother to the mosque for learning Quarnic studies where in the compound of the mosque he was subjected to sexual assault by none other than the petitioner, who was his teacher; that the child was in continuous trauma and did not divulge anything to his family, as such, the matter could not be reported to the police well in time; that it is the case of the prosecution that the victim had gathered courage to inform his parents when he attended the Awareness camp, on child rights regarding the crime committed upon him and later reported the matter to the local police at Kokernag in Anantnag district where zero FIR was registered and later the investigation was transferred to the jurisdictional police station at Domana. He further argued that the petitioner is accused of heinous offence punishable with life imprisonment and in case he is admitted to bail, he shall flee

from the course of justice by absconding, resulting into failure of justice and prayed that the application be rejected.

8. Heard learned counsel for the parties, perused the record and considered the matter..
9. The petitioner has been charged for the commission of offences punishable under section 4 and 6 of the POCSO Act, 2012. Section 4 of the Act provides for the punishment for penetrative sexual assault when the victim is below the age of sixteen years with imprisonment for a term, which shall not be less than twenty years, which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine. Section 6 of the Act provides for punishment for aggravated penetrative sexual assault, providing that the accused on conviction shall be sentenced to rigorous imprisonment for a term, which shall not be less than twenty years, which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine or with death.
10. In view of the provisions of Sections 4 and 6 of the POCSO Act of which the petitioner has been charged, it is apparent that he has been charged of very serious and heinous offences and one of them have been punishable with capital sentence. In such a situation, the plea for grant of bail is to be considered.

11. The Apex Court in *Gurbaksh Singh Sibbia Vs. State of Punjab*, **AIR 1980 SC 1632** referred to the following extract from the American jurisprudence having bearing on the subject of bail:

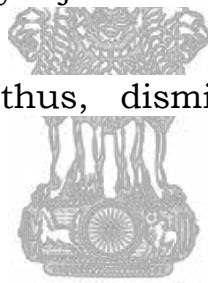
"where the grant of bail lies within discretion of the court, granting or denial is regulated to a large extent, by the facts and circumstances of each particular case. Since the object of detention order/imprisonment of the accused is to secure his appearance and submission to jurisdiction and the judgment 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".

12. On perusal of the chargesheet and the charge framed against the petitioner under section 4 and 6 of the POCSO Act, offence under section 6 of the POCSO Act has the provision of imposing death sentence as well, as such the bar imposed under section 480 of BNSS is applicable to the case where the sentence of imprisonment for life is not disjunctive of death penalty.
13. The presumptions under [Sections 29](#) and [30](#) of the POCSO Act are not absolute but are rebuttable presumptions. However, these presumptions are to be considered at the conclusion of the trial and they do not operate as a bar for grant of bail if there are other conditions and circumstances which even before recording the evidence during the trial make out a prima facie case for not relying upon and considering such presumptions. Such presumptions are in the form of an additional advantage to the prosecution and do not absolve the prosecution from proving the

foundational facts of its case and it is for the accused to prove his innocence after the prosecution establishes its case in terms of the foundational facts.

14. Having regard to the facts that no false implication has been pleaded by the petitioner; that most of the prosecution witnesses have already been examined and the trial of the applicant/accused being at the fag end, may conclude shortly and the charges framed against him involving heinous offences even death in case of Section 6 of the POCSO Act, this Court is of the considered opinion that the petitioner is not entitled to be admitted to bail at this stage. The trial court, in my considered opinion, has also rightly rejected the grant of bail in his favour.

15. This application is, thus, dismissed along with connected application(s).



(M A CHOWDHARY)
JUDGE

JAMMU
20.08.2026
Naresh/Secy.

Whether order is speaking: Yes
Whether order is reportable: Yes