

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

*Case No.:* B A No. 188/2025

Date of Pronouncement: - 27.02.2026

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**Rakesh Kumar**

.... Petitioner/Appellant(s)

Through: - Mr. R K Kotwal, Advocate.  
Mr. Faheem Ahmad Mir, Adv.

V/s

**UT of J&K.**

.... Respondent(s)

Through: - Mr. Pawan Dev Singh, Dy.AG

**CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER**

1. The petitioner has invoked the jurisdiction of this Court under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking his enlargement on bail in connection with FIR No. 62/2020 registered for offences punishable under Sections 302/34 IPC. The petitioner is aggrieved of the order dated 25.04.2025 passed by the learned Trial Court whereby his post-arrest bail application came to be rejected. The gravamen of the prosecution case is that the petitioner, in furtherance of a common intention with the co-accused (wife of the deceased), forcibly administered poisonous substance to the deceased, namely Chanchal Singh @ Kali, during the intervening night of 2nd/3rd May, 2020, resulting in his death, which is alleged to have occurred under suspicious circumstances. The prosecution attributes motive to an alleged illicit relationship between the petitioner and the co-accused.

2. The principal ground urged by the petitioner is that the trial has substantially progressed and out of the total twenty (20) witnesses cited by the prosecution, three (03) eye witnesses and thirteen (13) other material witnesses have already been examined, whereas one witness has expired. It is contended that the testimonies of the material witnesses do not disclose any incriminating material against the petitioner and that the continued detention of the petitioner would not serve any useful purpose.
3. Learned counsel for the petitioner submits that during the proceedings conducted under Section 174 Cr.P.C., statements of the alleged eye witnesses were recorded immediately after the incident, but none of them attributed any role to the petitioner. However, subsequently, during investigation and thereafter before the Court, the prosecution witnesses allegedly made improvements in their statements. It is further contended that PW-Daulat Singh and PW-Simranjeet Singh have been examined before the trial Court and though their presence at the place of occurrence has not been disputed, nothing incriminating against the petitioner has emerged from their testimony. Likewise, PW-Kamaljeet Kour has not supported the prosecution case and has been declared hostile. According to learned counsel, the medical evidence indicates that the deceased died due to poisoning and none of the witnesses examined so far have been able to establish the involvement of the petitioner in administering the alleged poisonous substance.
4. It is further submitted that the incident allegedly occurred on 03.05.2020, whereas the FIR came to be registered on 18.05.2020

and the statements of the alleged eye witnesses were recorded after considerable delay. This unexplained delay, according to the petitioner, casts serious doubt upon the veracity of the prosecution case. Learned counsel also pointed out that the Trial Court while rejecting the bail application had observed that certain material witnesses including an eye witness were yet to be examined; however, the said witness has since expired and the prosecution did not bring this fact to the notice of the Court. It is thus contended that practically all the material witnesses stand examined and their testimony does not substantiate the allegations levelled against the petitioner.

5. Learned counsel for the petitioner has also drawn the attention of this Court to the testimony of the children of the deceased, namely PW-Kamaljeet Kour and PW-Simranjeet Singh, who were projected as eye witnesses by the prosecution. It is submitted that PW-Kamaljeet Kour has not supported the prosecution story and has been declared hostile. She has even stated that the case against the petitioner has been falsely orchestrated under the influence of other family members. Though PW-Simranjeet Singh has partly supported the prosecution case, his testimony does not clearly establish the presence or involvement of the petitioner at the relevant time. It is thus contended that the prosecution case suffers from material contradictions and stage-by-stage improvements, which renders the accusations doubtful at least for the purpose of consideration of bail.

6. Per contra, learned counsel for the respondent-State submits that the petitioner is accused of committing a grave and heinous offence punishable under Section 302 IPC which carries the punishment of death or imprisonment for life. It is argued that at the stage of consideration of bail, the Court is not required to undertake a meticulous appreciation of evidence as that may prejudice the trial. According to the prosecution, the investigation has revealed that the petitioner had developed an illicit relationship with the wife of the deceased and that both of them conspired to eliminate the deceased. It is further submitted that some witnesses are still to be examined and if the petitioner is released on bail, there is every likelihood that he may influence or intimidate them.
7. I have heard learned counsel for the parties and perused the material placed on record. The law relating to grant of bail has been the subject matter of consideration by the Supreme Court in a catena of decisions. The basic rule governing the grant of bail is that “bail is the rule and jail is the exception.” In “*Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22”, the Supreme Court reiterated that a person accused of an offence is presumed to be innocent unless proven guilty and that deprivation of liberty must be considered a punishment unless it is required to ensure that the accused stands trial.
8. The principles governing grant of bail were also succinctly summarised by the Supreme Court in “*Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40”, wherein it was observed that the object of bail is to secure the appearance of the

accused during trial and that detention of an accused pending trial should not be resorted to as a measure of punishment. The Court further held that seriousness of the charge alone cannot be a ground to deny bail when the trial is likely to take considerable time.

9. At the same time, in cases involving serious offences punishable with death or life imprisonment, the Court is required to examine whether there exist reasonable grounds for believing that the accused is guilty of the offence. In “**Kalyan Chandra Sarkar v. Rajesh Ranjan**, (2004) 7 SCC 528”, the Supreme Court held that the Court must consider the nature of the accusation, the severity of punishment in the event of conviction, the nature of supporting evidence, the possibility of the accused tampering with witnesses and the larger interests of the public and the State.
10. Similarly, in “**Mahipal v. Rajesh Kumar**, (2020) 2 SCC 118”, the Supreme Court emphasised that though a detailed examination of evidence is not required at the stage of bail, the Court must record reasons which reflect a *prima facie* assessment of the material available on record.
11. In “**P. Chidambaram v. Central Bureau of Investigation**, (2020) 13 SCC 337”, the Supreme Court reiterated that recording of reasons while granting or refusing bail is mandatory. The Court observed that although elaborate discussion on the merits of the case is not required, the order must indicate application of judicial mind to the relevant factors governing the grant of bail.
12. Thus, the matter calls for a delicate balancing of competing considerations, on one hand, the seriousness of the allegations and

societal interest; on the other, the presumption of innocence and the right to personal liberty. The ultimate determination as to whether the petitioner has succeeded in making out a case for grant of bail would depend upon the Court's satisfaction regarding the existence of reasonable grounds for believing that he is not prima facie guilty and that his release would not prejudice the fair conduct of the trial. Whereas the material placed before this Court reveals that the prosecution has cited twenty (20) witnesses. Out of these, the material witnesses including the alleged eye witnesses, namely PW-Daulat Singh, PW-Karan Singh, PW-Simranjeet Singh, PW-Kamaljeet Kour, PW-Ashok Singh, PW-Gurmukh Singh, PW-Kewal Singh and PW-Amarjeet Singh have already been examined. Another witness, namely PW-Parkash Kour, the mother of the deceased, has expired. Thus, only a few formal witnesses remain to be examined.

13. The prosecution case is primarily based upon the testimony of the two children of the deceased, who were projected as eye witnesses to the occurrence during the intervening night of 02/03 May 2020. However, one of them, namely PW-Kamaljeet Kour, has not supported the prosecution case and has been declared hostile. The testimony of the other witness, PW-Simranjeet Singh, though partly supporting the prosecution case, does not unequivocally establish the role of the petitioner. Furthermore, the statements recorded during the inquest proceedings immediately after the incident do not contain any allegation against the petitioner and the subsequent statements appear to have been recorded after considerable delay.

14. The petitioner has been in custody since 18.05.2020, which means that he has undergone incarceration for a period of over five years. The trial has substantially progressed and most of the material witnesses have already been examined. In such circumstances, the apprehension of the prosecution regarding the petitioner influencing the witnesses appears to have considerably diminished.
15. The Supreme Court in “*Union of India v. K.A. Najeeb*, (2021) 3 SCC 713” has held that prolonged incarceration of an under-trial prisoner, coupled with the likelihood of the trial taking considerable time, can itself be a valid ground for granting bail even in serious offences.
16. Having regard to the totality of circumstances, particularly the fact that the material witnesses have already been examined, the petitioner has remained in custody for a considerable period, and the evidence on record prima facie indicates inconsistencies in the prosecution case, this Court is of the opinion that the petitioner has been able to make out a strong case for grant of bail at this stage without expressing any opinion on the merits of the case.
17. Consequently, the present bail application is allowed. The petitioner is directed to be released on bail subject to the following conditions:
- i. The petitioner shall furnish bail bonds and personal bonds to the tune of ₹1,00,000 (Rupees One Lakh) to the satisfaction of the trial Court.
  - ii. The petitioner shall appear before the trial Court on each and every date of hearing unless exempted and shall not leave the territorial jurisdiction of the Union

Territory of Jammu & Kashmir without prior permission of the Trial Court.

- iii. The petitioner shall not directly or indirectly influence the prosecution witnesses or tamper with the evidence in any manner.
- iv. The petitioner shall not indulge in any offence similar to the one for which he stands accused.

17. It is clarified that any observation made hereinabove is purely for the purpose of adjudication of the present bail application and shall not be construed as an expression of opinion on the merits of the case pending before the trial Court.

18. The bail application is, accordingly, *disposed of*.

JAMMU  
27.02.2026  
Ram Krishan

