

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

Bail App No.319/2025

Date of pronouncement: 24.04.2026

Date of uploading: 27.04.2026

Abhi Kumar alias Abhi Age 27 years

S/o Sh. Vijay Kumar

R/o Mana Tehsil R.S. Pura

District Jammu.

...Applicant(s)

At present detained in the Judicial

Lockup in District Jail Kathua.

Through: Mr. D.S. Saini, Advocate.

Vs

UT of J&K through Incharge Police Station Ramgarh

District Samba.

...Respondent(s)

Through: Mr. Sumeet Bhatia, GA vice
Mr. Visha Bharti, Dy.AG for R-1.
Mr. Sunil Sethi, Sr. Advocate with
Mr. Parimoksh Seth, Advocate.

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

JUDGMENT

24.04.2026 (ORAL)

- 01.** Petitioner, an undertrial, has approached this Court for bail, after his plea for a similar relief in terms of order dated 06.09.2025, came to be declined by learned Additional Sessions Judge, Samba [“the trial Court”].
- 02.** As prosecution story would unfurl on 09.08.2021, one Sat Pal lodged a written complaint with Police Station, Ramgarh, District Samba stating, *inter alia*, that his younger brother Madan Lal runs a hardware

shop in Ramgarh town. His son Mohinder Paul sits in the shop and younger son of his brother namely Munish Paul would often sit with him. At around 08:30 p.m. when Mohinder Paul and Manish Paul were closing the shop, 2-3 unknown persons equipped with sharp-edged weapons like toka etc. entered the shop and in furtherance of common criminal intention, attacked both Mohinder Paul and Manish Paul. They were seriously injured and one of Munish Paul's arm was amputated. On the receipt of this report, FIR No.59/2021 for offences under Sections 307/323/326/393/364-A/511/201/147 IPC and 4/25 Arms Act came to be registered.

- 03.** During investigation, when statements of injured under Section 164 Cr.P.C. came to be recorded on 13.10.2021, they revealed that accused not only made an attempt on their lives but also tried to kidnap one of victim's child namely Mandeep Singh @ Manu. The investigation culminated in the presentation of chargesheet in the trial Court.
- 04.** Accused came to be charged by the trial Court on 09.10.2023 for aforesaid offences to which they pleaded innocence, prompting the trial Court to ask for the prosecution evidence.
- 05.** Petitioner preferred an application for his enlargement in the trial Court; whereby his plea came to be declined primarily on the ground of seriousness of the charge and bar under Section 437 Cr.P.C.
- 06.** Petitioner has taken an exception to the observation of learned trial Court primarily on the ground of false implication and prolonged trial.

- 07.** The plea has been opposed on the other side by the respondents/prosecution and injured predominantly on the ground of gravity of the charge. It is contended that since material prosecution witnesses are yet to be examined, propensity on the part of the petitioner to influence and coerce prosecution witnesses, cannot be ruled out.
- 08.** Having heard learned counsels for the parties, I have gone through the petition and scanned the trial record.
- 09.** Personal liberty of a citizen is too precious a value of our constitutional framework recognized under Article 21. Courts are required to take cognizance of the fact that liberty of an individual, whose involvement is to be established in a full dressed trial is not dealt with lightly, because it is a cardinal principle of criminal jurisprudence that bail is a rule and jail is an exception. Seriousness of charge, no doubt, is a material consideration in a bail plea but that cannot be the only factor to be taken into consideration, because if it is reckoned as the only basis, then it may amount to recalibration of scales of justice.
- 10.** The complainant approached the Police Station with a complaint alleging *inter alia* that some unknown persons equipped with sharp edged weapons entered his shop and attacked his son and nephew namely Mohinder Paul and Manish Paul when they were closing the shop and in the occurrence, one of Manish Paul's arm was amputated. It is pertinent to underline that during investigation, when statements of injured came to be recorded after a lapse of more than two months,

they alleged for the first time that accused persons not only made an attempt on their lives but they also tried to kidnap minor son of one of the victims namely Mandeep Singh alias Manu for ransom. Pertinently, on this revelation coming forth after more than two months that petitioner and co-accused came to be charged by the investigating agency with allegations of attempt to kidnap for ransom under Sections 364-A/511 IPC. The material on record, *prima facie* points out the absence of grounds to believe that petitioner is involved in the commission of offence of attempt to kidnap for ransom.

11. Be that as it may, there is another aspect of the matter. The occurrence is alleged to have taken place on 09.08.2021 and petitioner came to be arrested on 20.10.2021, i.e. more than four years back. He was charged by the trial Court on 09.01.2023, i.e. about three years back and so far prosecution has managed to examine only 07 witnesses out of 19 cited in the challan.
12. All material prosecution witnesses including the complainant and injured stand examined. It is evident from the pace with which trial is proceeding that examination of remaining 12 prosecution witnesses is likely to take quite considerable period.
13. In the circumstances, embargo contained in Section 437 Cr.P.C. cannot be construed to have same efficacy, notwithstanding the length of the trial and period of incarceration of the undertrial and in view of salutary provision of Article 21 of the Constitution, prosecution cannot be allowed to invoke bar of Section 437 in perpetuity and

dilute fundamental right of petitioner to speedy trial and personal liberty.

14. Accordingly, present petition is allowed and petitioner is directed to be released on bail upon furnishing a surety bond to the tune of ₹50,000/- to the satisfaction of learned trial Court and a bond of personal recognizance of the like amount to the satisfaction of Superintendent of the concerned jail, subject, however to the following conditions that:

- i. he shall not leave territorial jurisdiction of the trial court without prior permission;
- ii. he shall attend in accordance with the conditions of the bail bonds;
- iii. he shall not commit an offence similar to the offence of which he is accused; and
- iv. he 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 him from disclosing such facts to the trial Court or tamper with the evidence.

(Rajesh Sekhri)
Judge

Jammu
24.04.2026
Eva

Whether the judgment is speaking or not?	Yes/No.
Whether the judgment is reportable or not?	Yes/No