

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

Bail App 376/2025  
CrlM(2551/2025)  
CrlM(618/2026)  
CrlM(728/2026)

**Mohd. Saber, Aged 55 years,  
S/o Mohd. Yousaf,  
R/o Village Kokra,  
Through his nephew,  
Zahir Abass, aged 30 years, S/o  
Mohd. Aslam, R/o Village  
Kokra,  
Tehsil Manjakote, District  
Rajouri**

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

Through: Mr. Anmol Sharma, Advocate

**Vs.**

- 1. U.T. of J&K Through Incharge  
Police Post, Rajouri**
- 2. Complainant 'A' through her  
father namely Tasleem Arif S/o  
Late Mohd Akbar R/o Ward  
No.9, Rajouri**

...Respondent(s).

Through: Mr. Banu Jasrotia, GA

**CORAM:**

**HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE**

**ORDER**

17.07.2026

1. Through the medium of the instant successive bail petition filed in terms of the provisions of Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the "BNSS" for short), the petitioner has sought the grant of bail in his favour in case FIR No. 442/2025 under Section 127(2) of the BNSS and Sections 7 and 8 of the POCSO Act of Police Station Rajouri on the main ground that he has been falsely and frivolously implicated in the case FIR when he has not

committed the alleged offences. That he has been facing detention in the case since his arrest on 01.09.2025. That he had already approached the learned trial Court seeking the concession of bail, which has been denied to him vide order dated 17.12.2025 passed by the learned trial Court on his bail application dated 08.09.2025. That the trial in the case has been going on since September, 2025 and the case is at the stage of recording of prosecution evidence. That his liberty stands curtailed on account of his continued detention in the case FIR for the last about one year. That his family has been suffering on account of his continued detention in the case FIR. That the Court has got the discretion to grant bail in the offences charged against him and there is no bar under law for the grant of bail in the said offences. That his health has badly deteriorated in jail. That his continued detention tantamounts to his pre-trial conviction. That he is presumed to be innocent until proved guilty at the conclusion of the trial. That grant of bail is the rule, particularly when the offences alleged do not carry the sentence of death or imprisonment for life or otherwise carry any statutory bar to the grant of bail.

2. The respondent-UT has actually filed the facts of the case and not the objections as required. It has been mentioned in the factual report that on 01.09.2025 complainant 'A' (respondent No.2) through her father lodged a written complaint with PP City Rajouri stating therein that he is father of 5-year-old female child residing at Ward No. 09 near HEM School Rajouri. That on 30.08.2025 his minor daughter had gone to a nearby Karyana store for purchasing toffee where an unknown shopkeeper allegedly touched the private parts of child with sexual

intent. That upon the receipt of the application, prior to registration of the case a report was entered in daily diary vide DDR No. 10 dated 01.09.2025 regarding the occurrence, and on its basis FIR No. 442/2025 under Sections 7, 8 of the POCSO Act was registered at Police Station Rajouri. That the investigation of the case was entrusted to PSI Akash Sharma. That the said PSI, while conducting investigation in the case, visited the place of occurrence. That after inspecting the spot as pointed out by the complainant, the site plan of the place of occurrence was prepared.

That the FSL team was called to the spot and the scene of crime proceedings were completed. That the detailed statement of the complainant was recorded through e-Sakshya app by mobile phone. That the minor girl was taken, along with her parents and under the supervision of a lady official of the concerned police post to GMC Rajouri for medical examination, and the medical report was obtained. That upon examination, it was found that the minor girl, with the consent of her parents, was not willing to undergo medical examination, and the report was made part of the case file. That the detailed statements of the complainant and other witnesses acquainted with the facts were recorded separately under Section 180 BNSS.

That the accused, namely Mohammad Sabar S/o Mohammad Yusuf, caste Domal, resident of Kakora, Tehsil Manjakote, presently running a Karyana shop at Ward No. 8 near HEM School, Rajouri, was arrested as per law, brought to the Police Station, taken into custody in

the case, and all legal formalities were completed. That thereafter, upon production before the Court at Rajouri, the detailed statements of the minor girl (daughter of the complainant) and her mother namely Tafseer Minhas were recorded under Section 183 BNSS before the Magistrate, and certified copies of the statements were obtained. That thereafter, the birth certificate of the minor girl, who is a student of LKG at International HSS School Peerkanju was obtained and as per the birth certificate, the date of birth of the minor girl was found to be 23.03.2020. That the statement of the issuing authority of the certificate was recorded under Section 180 BNSS. That thereafter, the minor girl along with her parents was taken under supervision of a lady official to the office of the CWC for counselling. That the CDR and SDR of the personal mobile number 8082519346 of the accused were obtained from the office of the SSP Police Rajouri. That upon examination, it was found that on the date of occurrence i.e., 30.08.2025, the accused who was running a Karyana shop at Ward No. 8 near HEM School, Rajouri was present at the place of occurrence. That submitted that during investigation of the present case, inspection of the medical examination, birth certificate, statements of witnesses under Section 183 BNSS and other circumstances and evidence collected during investigation revealed that on the date of occurrence i.e., 30.08.2025 at about 1630 hrs, the minor daughter of the complainant aged about 05 years had gone from her house to the Karyana shop of accused Mohammad Sabar to purchase chips and popcorn. That the accused with criminal intention, kept the minor girl confined near the counter area of his shop for about one hour, kissed her

several times, detained her in the shop, inserted his hand into her private part and started pressing it. That the accused continued this brutal act with the minor girl for about one hour while keeping her confined.

It is further mentioned in the memo of factual report that the petitioner stands already charged for the commission of offences punishable under section under sections 127(2) of BNS and Sections 7 and 8 of POCSO Act.

3. I have heard learned counsel for the petitioner and respondent No. 1-UT. It is needful to mention that the complainant came to be impleaded as respondent No. 2 in the instant bail petition vide order dated 13.02.2026 after allowing his application, CM No. 91/2025. Since there was no representation on his part on that day, notice was directed to be issued to him, but he subsequently did not choose to appear in the matter.

4. Perused the instant application, the memo of factual report filed by respondent No. 1-UT, as also the scanned copy of the trial court record. The order dated 17.12.2025 passed by the learned trial court while rejecting the earlier application of the petitioner has also been gone through.

5. Keeping in view the perusal of the instant successive bail application, the factual report, the trial court record filed, and the consideration of the rival arguments advanced at the Bar on both sides, this Court, in the facts and circumstances of the case, is of the opinion that it would be in the ends of justice if the petitioner-accused, namely

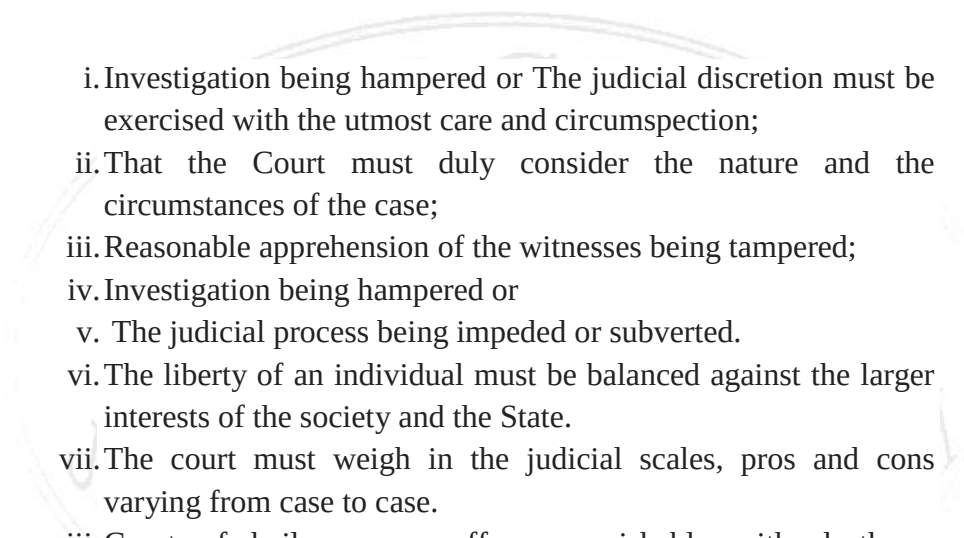
Mohd. Saber S/o Mohd. Yousaf, R/o Village Kakora, Tehsil Manjakote, District Rajouri, is admitted to bail in case FIR No. 442/2025 under Section 127(2) of the BNS and Sections 7 and 8 of the POCSO Act of Police Station Rajouri, subject to some reasonable terms and conditions.

6. Apart from the statutory bar, if any, two paramount considerations viz. likelihood of accused fleeing from justice and tampering with the prosecution evidence relate to the ensuring of a fair trial of the case in a court of law. It is essential that due and proper appreciation and weightage should be bestowed on these factors apart from others. The grant of bail or the denial of the same falls within the purview of the judicial discretion meant to be exercised on sound legal principles upon the logical interpretation and application of the same in the given facts and circumstances of the case. The necessary arrests subject to the law of bails as provided under the Code, BNSS and the provisions of different special Legislations are permissible under the Constitution of our Country by way of a reasonable exception to the fundamental right to liberty guaranteed under Article 21 of the Constitution and the mandate of the provisions of Article 22 of the Constitution is meant to be followed upon making any such necessary arrests.

7. In **State of Rajasthan Jaipur Vs. Balchand AIR 1977 S.C. 2447**, the Hon'ble Apex Court has held, "basic rule may perhaps be tersely put as bail not jail, except where there are circumstances of fleeing from justice or thwarting the course of justice or creating other

troubles in the shape of repeating offences or intimidating the witnesses and the like, by the petitioner who seeks enlargement on bail from the court.

8. No single rule or a golden litmus test is applicable for consideration of a bail application and instead some material principles/guidelines are needed to be kept in mind by the Courts and the Magistrates for consideration of a bail application especially including:

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- i. Investigation being hampered or The judicial discretion must be exercised with the utmost care and circumspection;
  - ii. That the Court must duly consider the nature and the circumstances of the case;
  - iii. Reasonable apprehension of the witnesses being tampered;
  - iv. Investigation being hampered or
  - v. The judicial process being impeded or subverted.
  - vi. The liberty of an individual must be balanced against the larger interests of the society and the State.
  - vii. The court must weigh in the judicial scales, pros and cons varying from case to case.
  - viii. Grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the rule;
  - ix. The court at this stage is not conducting a preliminary trial but only seeking whether there is a case to go for trial;
  - x. The nature of the charge is the vital factor, the nature of evidence is also pertinent, the punishment to which the party may be liable also bears upon the matter and the likelihood of the applicant interfering with the witnesses or otherwise polluting the course or justice, has also a bearing on the matter.
  - xi. The facts and circumstances of the case play a predominant role.

9. The Hon'ble Apex Court in **Gur Bakash Singh Sibbia Vs. State of Punjab AIR 1980 S.C. 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.”*

10.It has been laid down by the Hon’ble Supreme Court in **Sanjay Chandra vs. Central Bureau of Investigation AIR 2012 SC 830** at Para 14 of its Judgment as under:-

*14) “In bail applications, generally, it has been laid down from the earliest times that the **object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail.** The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that **punishment beings after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.** From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. **From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, necessity is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”***

11.This Court in its opinion is fully fortified with the authoritative law laid down by the Hon’ble Apex Court cited as **Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40** in which the

bail was granted to the appellant who was involved in economic offences. It is profitable to reproduce the relevant paras 24 and 25 of the judgment for ready reference:-

*“24. In the instant case, as we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating of the scales of justice.”*

*“25. The provisions of Cr.P.C . confer discretionary jurisdiction on criminal courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.”*

12.In **“Prahlaad Singh Bhati v. NCT, Delhi”, (2001) 4 SCC 280**, the Hon’ble Apex Court has laid down the special factors for taking into consideration while exercising the bail jurisdiction and the relevant para 8 of the said judgment is reproduced as hereunder for ready reference:-

*“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of*

each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

13. The observations of the Hon’ble Apex Court laid down in “***State of U.P. v. Amarmani Tripathi***”, (2005) 8 SCC 21 at para 18 of the judgment also deserve a needful mention:

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see *Prahlad Singh Bhati v. NCT, Delhi* and *Gurcharan Singh v. State (Delhi Admn.)*]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.”

14. The Hon’ble Apex Court in Sanjay Chandra’s case cited supra has *inter alia* held at para 40 of the judgment, “the grant or refusal to grant bail lies within the discretion of the Court. The grant or denial

is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon, whenever his presence is required.”

15. The Hon’ble Apex Court in its judgments cited as **Siddharam Satlingappa Mhetre Vs. State of Maharashtra decided on 02/12/2010, AIR 2011 SC312 and Sushila Aggarwal and others vs. State (NCT of Delhi) and Another decided on January 29, 2020 by a larger bench 2020 SC online 98**, has interpreted law on the subject of anticipatory bail with a very wide outlook and while interpreting the concept of liberty guaranteed under Article 21 of the Constitution of our country in a flexible and broader sense. It has been inter alia observed by the Hon’ble Apex Court in the aforesaid judgments that the exact role of the accused must be properly comprehended before arrest is made. “The inner urge for freedom is a natural phenomenon of every human being. Respect for life and property is not merely a norm or a policy of the state but an essential requirement of any civilized society. Just as the liberty is precious to

an individual, so is the society's interest in maintenance of peace, law and order.”

16. The petitioner-accused has been under detention in the case FIR in question since September 2025. The trial of the case is going on and is at an advanced stage, as most of the prosecution witnesses have been examined. The petitioner-accused has been charged in the case under Sections 127(2) BNS and 7 and 8 of the POCSO Act. The offences charged against the petitioner-accused do not attract any statutory bar in the matter of bail. The provisions of Sections 29 and 30 of the POCSO, which lend presumption and culpability to the charge against the accused, do not however bar the grant of bail.

17. For the foregoing reasons, the present successive bail application is allowed and accordingly, the petitioner is admitted to bail, subject to his furnishing surety and personal bonds each in the amount of Rs. 50,000/- (Rupees Fifty Thousand only), to the satisfaction of the learned Registrar Judicial, Jammu Wing of this Court, and the Superintendent Jail concerned, respectively, for assuring the compliance of the following conditions:

- i. The petitioner shall remain punctual before the learned trial Court on each and every date of hearing.
- ii. The petitioner shall not leave the limits of India without the prior permission of the learned trial Court.
- iii. The petitioner shall not repeat the commission of any offence.

iv. In case the requisite surety bond is furnished to the satisfaction of the learned Registrar Judicial, Jammu, Registry shall issue a formal release order directing the Superintendent Jail concerned, to release the petitioner/accused from his custody in the FIR in question.

18. Nothing in this order shall be construed as any prejudging of or interference with the merits of the main case.

19. The bail petition is, accordingly, **disposed of**.

**SRINAGAR**  
17.07.2026  
*Mubashir*

**(MOHD YOUSUF WANI)**  
**JUDGE**