

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

CRLA(D) 16/2026

Reserved on: 17/08/2026.
Pronounced on: 08/09/2026.
Uploaded on: 08/09/2026.

**Union Territory Through
Police Station Bijbehara**

...Appellant.

Through: Mr. Mohsin Qadiri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel

Vs.

**Ghulam Nabi Sumji
S/o. Late Mohammad Sumji
R/o. Bijbehara Anantnag**

...Respondent.

Through: Mr. Saif Ul Islam Malik, Advocate with
Mr. Mudasir Ahmad, Advocate

CORAM:

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE
JUDGMENT**

(Per: Mohd Yousuf Wani-J)

1. This appeal, having been filed in terms of the provisions of Section 21(4) of National Investigation Agency Act, 2008, impugns the order dated 06-12-2025, read with order dated 29-12-2025 passed by the Court of Ld Special Judge [designated under ULA(P) Act, 1967] Anantnag and hereinafter referred to as the "Trial Court" for short, whereby the Ld. Trial Court enlarged the Respondent [Accused] to bail in case FIR No. 54 of 2024 in the offences u/s 10 and 11, Unlawful Activities (Prevention) Act ["ULA(P) Act" for Short], 121 and 121-A of the Indian Penal Code ["IPC" for short].

2. The Ld Trial Court, vide order dated 06-12-2025, granted interim bail in favour of the Respondent/Accused, which was subsequently made absolute on 29-12-2025.
3. The impugned orders have been assailed on the main grounds that same are perverse, bad in the eyes of law and against the legal principles governing the subject of bail, particularly in the cases falling under ULA(P) Act. That the Ld. Trial Court, while adjudicating upon the bail application giving rise to the aforesaid orders, has proceeded to conduct a mini-trial by going into the merits of the case. That the Ld. Trial Court did not appreciate the allegation against the respondent-accused to the effect that he was found continuing the activities of a banned organization, i.e., Muslim Conference, Jammu and Kashmir, Sumji Faction. That the Ld. Trial Court has commented upon the material/evidence collected by the Investigating Agency by observing that same does not establish a clear prima facie case. That the said observations of the Ld. Trial Court have touched the merits of the evidence available with the investigating agency/prosecution. That the observation of the Ld. Trial Court to the effect, "*A mere possession of literature and organizational stationary without clear and contemporaneous links to operational violent acts, recruitment for training, procurement or direction of an offense, may not, in view of the record available with the court, establish the prima facie threshold required to deny bail in the case,*" is also erroneous on facts and in law, as the material

recovered from the possession of the Respondent/Accused establishes the fact that he intended and supported the claim of secession of UT of Jammu and Kashmir from the Union of India through his written literature.

That the respondent-accused advocated, abetted, and incited the commission of unlawful activities. That the Ld. Trial Court has observed in the basic impugned order dated 06.11.2025, that the offenses leveled against the respondent-accused do not fall within Chapters IV and VI of the ULA(P) Act, and as such, do not attract the bar under Section 43-D (5) of the said Act. That despite the rigor of Section 43-D of ULA(P) Act being not applicable in the case of the respondent, the Ld. Trial Court ought to have kept in mind the heinousness and severity of the allegations against the respondent, being punishable u/s 10 and 13 of ULA(P) Act. That the Ld. Trial Court did not appreciate the fact regarding apprehension of the respondent's misusing the concession of bail, which was apparent as he had already been an absconder in another case titled **“UT of J&K versus Mohd Hussain Zargar and others”**, bearing FIR No. 249 of 2009, of Police Station Bijbehara.

That the respondent was being provided all the necessary facilities in jail and there was nothing on record suggestive of the fact that he suffered from such a disease that could not have been taken care of by the prison authorities. That the basic impugned order dated 06-12-2025 is cryptic, without any reason, and as such, is not

within the four corners of law. That the Ld. Trial Court was obliged under law to exercise its discretion in a judicious manner, with great circumspection, having regard to the seriousness of the crime alleged against Respondent/Accused. That the Ld Trial Court has acted with leniency while passing the impugned orders. That during the course of investigation, the commission of the offences punishable u/s 121, 121A IPC could not be established, when the offenses u/s 10 and 13 of ULA(P) Act were found *prima facie* established against the respondent, regarding which the government vide notification S.O. No. 35 dated 10th February 2024, granted sanction for prosecution.

4. We have heard the learned counsel for the parties in respect of the matter.
5. The learned Senior AAG while reiterating his stand taken in the memo of appeal submitted that the impugned orders, whereby the respondent was initially admitted to interim bail and subsequently to absolute bail respectively, suffer from illegality and perversity for having been passed in violation of set principles of law on the subject as evolved by the Hon'ble Apex Court and various other High Courts of the country, including this court, for consideration, especially in respect of bail petitions covering heinous anti-national offences. He submitted that as on the date of passing of the impugned orders, the respondent-accused was *prima facie* involved in the commission of offences punishable under sections 10 and 13 ULA(P) Act, 121 and

121A IPC, arising out of the case FIR No. 54 of 2024 of Police Station Bijbehara.

The learned Senior AAG submitted that respondent/accused continued to be the member of an unlawful declared association and also took part in, committed, advocated, abetted, advised and incited the commission of unlawful activities punishable u/s 10 and 13 of the ULA(P) Act. He further contended that the respondent/accused, as on the date of passing of the impugned orders, was involved in the commission of offences punishable u/s 121 and 121A IPC, providing punishment for waging or attempting to wage war or abetting the waging of war against the Government of India and also of conspiracy to commit such offences. He contended that the learned trial court, while underestimating the seized record evidencing the commission of the aforesaid offences, proceeded to observe that there appear no *prima facie* ground of the involvement of the respondent/accused in the commission of offences punishable under the aforementioned sections of law. He contended that the learned Trial Court, while exceeding its powers limited for consideration of bail application in respect of the offences under ULA(P) Act, made an unfounded observation that respondent does not seem to be *prima facie* involved in the commission of the aforesaid offences. He contended that even if the statutory bar in terms of provisions of Section 43D of ULA(P) Act is not attracted in the case, yet the respondent/accused was not deserving his enlargement in heinous,

non-bailable and anti-national offences. He further contended that there is every apprehension of the misuse of concession of bail by the respondent/accused who had already been declared an absconder in another case FIR.

6. ***Per contra***, the learned counsel for the respondent-accused very vehemently contended that the appeal deserves to be outrightly dismissed as being meritless. He contended that the respondent/accused, being an old-aged and infirm person, has been falsely and frivolously implicated in the case FIR when he is innocent and has not committed the alleged offenses. That the respondent did not commit any unlawful activity as alleged. He contended that the Ld. Trial Court has rightly, on the basis of the police report, made its satisfaction to the effect that prima facie there appear no grounds of involvement of the respondent in the offenses levelled against him. He contended that the statutory bar under Section 43D, ULA(P) Act does not operate in respect of the offenses u/s 10 and 13 of the ULA(P) Act, which do not fall within Chapters IV and VI of the Act.

The learned counsel further contended that the basic interim bail order reveals the observation of the Ld. Trial Court that prosecution did not demonstrate any specific instance since the arrest of the respondent regarding his attempt to tamper with the prosecution evidence, nor did it furnish any material showing that the respondent has previously evaded the court process or has absconded. He

contended that it has been further observed by the Ld. Trial Court in the basic interim order dated 16.12.2025 that the concern of the prosecution regarding tampering/influencing of witnesses and also risk of evasion require careful mitigation to be taken care of by imposition of reasonable bail conditions. He further contended that the respondent is a senior citizen of approximately 70 years of age who was arrested in the case on 18.11.2025. That he suffers from multiple chronic, age-related ailments, hypertension, cardiac complications, chronic respiratory disorder, and degenerative joint disease, requiring continuous medical care and treatment.

It was further contended by the learned counsel for the respondent/accused that the accused, during investigation of the case, voluntarily attended the police station concerned in connection with the investigation of the case FIR, but he was ultimately arrested in a mechanical manner. He further contended that the interim bail order dated 06.12.2025 came to be made absolute by the Ld. Trial Court by order dated 29.12.2025, when there was nothing incriminating against the respondent regarding his violation of any of the bail conditions.

The learned counsel further contended that the grant of bail is a rule and its denial an exception, especially in cases where primarily there is no statutory bar and secondly, where there appear no reasonable grounds of involvement of the accused in the offenses punishable with death or imprisonment for life, in alternative. The

learned counsel further contended that the offenses punishable u/s 121 and 121A IPC, which were also leveled against the respondent, were not found established against him during investigation of the case. That the involvement of the respondent in the remaining offences u/s 10 and 13 of the ULA(P) Act is also baseless and without any sort of material evidence. He contended that the present appeal filed by the State is liable to be outrightly rejected, being devoid of any merit. That the allegations levelled against the respondent are vague, general and without any substance. That the impugned bail orders are well sustained under law and do not suffer from any illegality or perversity.

7. We have perused the record of the instant appeal and a thoughtful consideration has also been accorded to the rival contentions advanced at the bar.
8. The prosecution case, in nutshell, is that on 23.03.2024, an information was received by Police Station Bijbehara to the effect that certain Leaders/Members of Muslim Conference, JK Sumji Group led by respondent, despite being aware of the fact that the said organisation has been declared as an unlawful organisation, are carrying anti-national activities in the jurisdiction of the police station and are provoking the youth to carry out agitations for secession of Jammu and Kashmir from the Union of India. That on receipt of the said information case FIR No. 54 of 2024 under sections 10, 13 ULA(P) Act and Sections 121, 121A IPC was

registered and investigation commenced. That search of the respondent's residential premises was conducted in the presence of the Executive Magistrate and some witnesses. That the search led to the recovery of some documents and materials of the unlawful association. That the statements of the witnesses came to be recorded during investigation. That the recovered material and the witnesses' statements *prima facie* provided link between the respondent/accused and the continued activities of the organization having been already declared unlawful. That the respondent-accused was arrested on 18.11.2025.

9. As hereinbefore mentioned during reference to the rival stands of the parties, the Ld. Trial Court initially granted interim bail on 06.12.2025 in favor of the respondent/accused, subject to some conditions, upon being satisfied that the statutory bar u/s 43D of ULA(P) Act is not attracted in the case and secondly there appear no reasonable grounds of the involvement of the respondent/accused in the commission of the offenses u/s 121, 121A IPC. The Ld. Trial Court has observed in the basic impugned order, while granting the interim bail, that the apprehensions of the prosecution regarding misuse of concession can be taken care of by the imposition of reasonable restrictions on the bail.

10. There appears to be no illegality or perversity in the passing of the impugned orders by the Ld. Trial Court. The Ld. Trial Court initially passed an interim bail order on 06.12.2025 in favor of the

respondent/accused, enlarging him up to 29.12.2025 with the imposition of some reasonable conditions as to the furnishing of personal and surety bonds for his cooperation during investigation, abstinence from any attempt to tamper with the evidence or misusing the concession of bail in any other manner. The Ld. Trial Court subsequently on 29.12.2025, made the interim order dated 06.12.2025 as absolute, upon being satisfied that nothing adverse was put-forth against the respondent regarding his violation of any bail conditions.

11. Admittedly, the offenses punishable u/s 10 and 13 of the ULA(P) Act, falling under Chapter-III of the ULA(P) Act, do not attract the bar u/s 43D of the Act. Section 10 of the ULP Act, in the backdrop of the allegations against the respondent/accused, carries a punishment of imprisonment for a term which may extend to two years with liability to fine also. Section 13 of the Act provides for punishment of imprisonment for a term which may extend to seven years with liability to fine also.

The offense u/s 121 IPC, which attracts the statutory bar under section 437 of the repealed Code of Criminal Procedure, corresponding to section 481 of BNSS, was not found established along with offence under section 121A IPC during investigation of the case, and after the passing of the impugned orders, which were accordingly dropped in the case FIR by the investigating agency.

Even in the case of offenses providing the punishment of death or imprisonment for life in alternative, bail can be granted by a court after being satisfied that there appear no reasonable grounds of the involvement of the accused in the said offenses. The Ld. Trial Court has made a similar observation while passing the basic impugned order dated 06-12-2025, as the offenses under sections 121 and 121A IPC were intact in the FIR at the time of passing of the said orders.

12. The provisions of clause (5) of Section 43-D ULA (P) Act place an embargo on the grant of bail to an accused involved in the offence(s) falling under the Chapters IV and VI of ULA (P) Act when, the accusation against him appears to be *prima facie* true. Such restrictions imposed by the ULA (P) Act are an addition to the restrictions under the Code/BNSS any other law for the time being in force on granting bail.
13. It is apt to reproduce the provisions of clauses (5) and (6) of the Section 43D of ULA (P) Act for ready reference: -

“43D. Modified application of certain provisions of the Code.

- (1)
- (2)
- (3)
- (4)

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under

section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true.

(6) The restrictions on granting of bail specified in sub-section (5) are in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7)

14. Thus, it is clear that an accused alleged to have committed the offences falling under the Chapters IV and VI of the ULA (P) Act, whether facing investigation or trial has to first come out of the embargo placed by the Section 43D (5) of the Act, whereafter his case for grant of bail can be considered under the provisions of Sections 437 & 439 of the “Code” respectively corresponding to the Sections 480 & 483 of “BNSS”. If the court is of the opinion on the perusal of the Case Diary file or the record of the police report/challan in case of pendency of the trial, that accusation against the accused appears to be *prima facie* true, bail cannot be granted. The inference regarding the “***Prima facie True***” or “otherwise” of the prosecution case during the investigation stage can be drawn from the perusal of the case diary and during trial from the record of the Police report/challan.

The words “***prima facie true***” cannot be read and understood to mean proved as used in the Evidence Act.

Such an interpretation would set at naught the power vested in a Court to grant bail pending trial. The expression “***Prima facie true***” would obviously mean something more than mere

suspicion/conjectures and something less than “proved”. The inference regarding “*Prima facie true*” would vary from case to case and from one accused to another. What may be “*Prima facie true*” in one case may not be so in another and therefore, the said expression cannot on account of a discretion vested in the Court be put in a strait jacket. Each case would have to be dealt with and examined on its own facts and decided.

15. The consideration at the time of taking up a bail application for disposal is different from the consideration to be adopted at the end of the trial for holding an accused, guilty or not guilty.

In considering an application for bail, the court is not required to conduct a preliminary trial of the case and consider the probabilities of the accused being found guilty or innocent.

The Courts while deciding the bail applications involving the offences in respect of which the Code/BNSS or some Special Statute places embargo/limitations will be traversing beyond their proper ambit and would be exceeding the limit of their functions, if they get engaged in discovering the guilt or innocence of the Applicant/accused, which can only be determined at the conclusion of the trial.

16. **Obviously, the standard applied for grant of bail is higher than** the standard to be applied for framing of charge. While as in framing charge, Court may be of *prima facie* opinion that offence has been

committed by the accused, but for refusing bail, Court should be of the opinion also that accusation is” *Prima facie true*”.

17. The provisions of section 437 of the Code corresponding to Section 480 BNSS again place an embargo on the grant of bail to an accused in respect of whom there appear to be “*reasonable grounds*” regarding his involvement in an offence punishable with death or imprisonment for life. However, such bar does not operate where imprisonment for life is provided disjunctive of death penalty. Even if one escapes the embargo placed under aforesaid provisions of the Code/BNSS, his case in respect of non-bailable offences is subject to the discretion of the Court, which is to be exercised on the sound judicial principles being evolved from time to time by the Hon’ble Apex Court and the different High Courts of the country. The use of words “**may**” in Sections 437 and 439 of the Code (corresponding to 480 & 483 BNSS) implies the discretion of the Court for grant of bail in ordinary non-bailable offences.

18. There is no single golden rule or any single litmus test for consideration of a bail application. However, the following guidelines/governing principles, which are not exhaustive are to be kept in mind while considering a bail application.

- i) 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 including:

- a) reasonable apprehension of the witnesses being tampered;
 - b) investigation being hampered or
 - c) the judicial process being impeded or subverted.
- iii) The liberty of an individual must be balanced against the larger interests of the society and the State.
- iv) The court must weigh in the judicial scales, pros and cons varying from case to case all along bearing in mind two paramount considerations viz:
 - i) grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the Rule;
 - ii) the court at this stage is not conducting a preliminary trial;
 - iii) 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;
 - iv) the facts and circumstances of the case play a predominant role.

19. Admittedly, it is now well settled by a catena of judgments of the Hon'ble Supreme Court that the power to grant bail is not to be exercised as if punishment before trial is being imposed. The only material consideration in such situation is whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence.

20. It is also well settled that the bar imposed under Section 437 of the Code corresponding to Section 480 BNSS on the exercise of the discretion in the matters of bail subject to proviso contained in the section is confined to the offences providing sentence of death or imprisonment for life in alternate of the death and the cases covered

by the offences carrying sentences of imprisonment for life disjunctive of death sentence are exempted from the embargo.

21. Hon'ble Apex Court in **“Gur Bakash Singh 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 affect 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 the judicial verdict. Any one single circumstance cannot be treated as of universal validity or necessarily justifying the grant or refusal of bail.”

22. Admittedly, in case of non-bailable offence, which do not carry the sentence of death or imprisonment for life in alternative, bail is a rule and its denial an exception especially where there is nothing on record to show that the accused if admitted to bail will jump over the concession of bail and will tamper with the prosecution witnesses.
23. It is a trite that two paramount considerations viz: likelihood of accused fleeing from justice and his tampering with prosecution evidence relate to the ensuring of fair trial of the case in a court of justice, it is essential that due and proper weightage should be

bestowed on these two factors apart from others. The requirements as to bail are merely to secure the attendance of the accused at the trial.

24. Bail or jail at the pre-trial or post-conviction stage belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion. Personal liberty deprived when bail is refused is too precious a value of our constitutional system recognized under Article 21 that the crucial power to negate it is a great trust exercisable not casually but judiciously with lively concern for the cost to the individual and the community. After all personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law (Per Hon'ble Mr. Justice V. R. Krishna Iyer in *G. N. Nara Simhula vs Public Prosecutor Andhra Pradesh* AIR 1978 SC 429).
25. The learned trial court appears to have committed no illegality by enlarging the respondent/accused initially on interim bail subject to some reasonable conditions so as to rule out any apprehension of misuse of concession by him. The interim order dated 06-12-2025 came to be made absolute by learned trial court on 29-12-2025 when nothing adverse was reported to the court regarding the misuse of any of the bail conditions.
26. The learned trial court in the basic impugned order dated 06-12-2025 specifically mentioned that the observations made therein have been

made for the limited purpose of the disposal of the bail application, which shall not be treated as any expression of the court on the merits of the prosecution case, which has to be decided at the trial.

The learned trial court has also vide impugned order dated 06-12-2025 kept the prosecution or the investigating agency at liberty to move the court seeking cancellation of bail in case of breach of any of the bail conditions. The conditions imposed by the learned trial court at para 14 of the impugned order take care of any apprehension of the prosecution regarding the misuse of concession by the respondent.

27. In the backdrop of the aforementioned discussion, there seems to be no merit in the instant appeal, which is accordingly **dismissed**.

(MOHD YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
CHIEF JUSTICE (ACTING)

SRINAGAR
08.09.2026
Shahid Manzoor

- | | |
|--|-----|
| 1. Whether the judgment is speaking | Yes |
| 2. Whether approved for reporting in Law Journal/Reporter (print/electronic) | Yes |
| 3. Whether approved for reporting in Press/Media | No |