

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

Pronounced on:08.07.2026

Uploaded on: 09.07.2026

Bail App No.61/2025

MUNEER AZIZ WAR

...PETITIONER(S)

Through: - Mr. Parvaiz Nazir, Advocates

Vs.

UT OF J&K

...RESPONDENT(S)

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

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER(ORAL)

1) The petitioner has sought bail in a case arising out of FIR No.59/2012 for offences under Section 302 and 201 RPC registered with Police Station, Batamaloo, Srinagar.

2) As per the case of the prosecution, on 15.05.2012 Police Station, Batamaloo, received an information that whereabouts of one Wali Mohammad Hajam S/o Ghulam Rasool Hajam R/o Wangath Handwara are not known and that the said person is missing since 13.05.2012. In the report, an apprehension was expressed that some unknown persons may have killed him and may have concealed the dead body at some unknown place. On the basis of this information, FIR No.59/2012 was registered and investigation was set into motion. During the course of

investigation, statements of witnesses acquainted with the facts and circumstances of the case were recorded under Section 161 of Cr. P. C and the search was conducted.

3) During the course of investigation, it came to the fore that the petitioner, who was a religious cleric (Imam) of Masjid Salafia, is involved in the occurrence. He was taken into custody and during his interrogation, he admitted that he has committed the murder of Wali Mohammad Hajam, whose dead body was recovered during the course of investigation. It was also admitted by the petitioner that co-accused Izhar-ul-Islam Ganai, had assisted him in commission of crime. The co-accused was also interrogated separately and he confirmed the version of occurrence given by the petitioner. The police, on the basis of disclosure made by the accused persons, recovered the dead body of the deceased from an open land at Firdous Abad Batamaloo Srinagar. Thereafter postmortem of the dead body was conducted and the wearing apparels of the deceased were seized. On the basis of identification of the accused persons, the weapon of offence, a sword, was also recovered.

4) After investigation of the case, it came to the fore that the petitioner was discharging the functions of Imam of Masjid Salafia at Firdous Abad, Batamaloo, Srinagar, and he was residing in a room situated at Lane No.5 Firdous Abad, Batamaloo, Srinagar. The said room, belonged to one of the relatives of the petitioner, and it was situated at a distance of 60 yards from the house of one

Mohammad Sultan in which his daughter, namely, Raziya Sultana, was also residing. It was revealed that the petitioner had developed relationship with the said girl, whereafter he also developed physical relations with her. It was found that father of the girl was a mason and deceased Wali Mohammad Hajam was also a mason and because of this, deceased Wali Mohammad used to visit the house of Mohammad Sultan, father of the girl. It was also found that the deceased was trying to impress the daughter of Mohammad Sultan and he was also expressing his love for her, to which she was objecting. The investigation further revealed that the girl, Raziya Sultana, revealed the actions of the deceased to her lover, the petitioner herein, whereafter the petitioner asked Raziya Sultana to stop the deceased from visiting her house but she was unable to do so. It was also found that the girl narrated to the petitioner that she cannot stop the deceased from visiting her house because her family considers him like a family member.

5) Thereafter the petitioner, in order to keep the deceased away from the house of his beloved and with a view to remove him from his way thought of a plan to commit his murder with a sharp edged weapon (sword) which he purchased from the market at Srinagar and kept the same at his residence. The petitioner was waiting for the appropriate time to strike against the deceased so as to accomplish his plan.

6) On 13.05.2012, after completion of Isha prayers, while the deceased was coming out of the house of Raziya Sultana, the

petitioner wanted to accomplish his plan but he was not having the weapon with him, therefore, he asked deceased Wali Mohammad Hajam to come to his residence. When both of them reached inside the room, they started conversing with each other and when the deceased was leaving the room, the petitioner availed the opportunity and he repeatedly inflicted the blows of sword upon the head of the deceased, as a result of which he received grievous injuries and fell down on ground, whereafter the petitioner called his friend, co-accused Izhar-ul-Islam, on telephone. The said accused reached the spot and found that the deceased had breathed his last. Thereafter the petitioner, apprehending that the deceased may still be alive, cut the penis of the deceased with the sword. After committing the murder of the deceased, the petitioner with the help of co-accused carried the dead body of the deceased and dumped it in a drum and in the morning, the two accused, after wrapping the dead body in a blanket, dumped the same in a pit in an open plot and covered it with soil.

7) After investigation, offence under Section 302 RPC was found established against the petitioner whereas offence under Section 201 RPC was found established against the co-accused. Accordingly, the challan was laid before the trial court on 08.08.2012. On 01.09.2012, the learned trial court framed charges for offences under Section 302/201 RPC against the petitioner whereas charge for offence under Section 201 RPC was

framed against the co-accused. Both the accused denied the charges and the prosecution was directed to lead evidence in support of the charges.

8) The petitioner has sought bail only on the ground of his long incarceration and on account of violation of his right to speedy trial. According to the petitioner, he is in custody for the last about 14 years but the trial against him has not concluded as yet. It has been contended that there is no likelihood of completion of trial in near future, as such, the petitioner deserves to be enlarged on bail.

9) I have heard learned counsel for the parties and perused record of the case including the trial court record.

10) Learned counsel for the petitioner, during his arguments, has reiterated that the speedy trial is a fundamental right of an accused and once this right is violated, the accused is entitled to be enlarged on bail.

11) Learned Sr. AAG, on the other hand, has submitted that the petitioner has committed a heinous offence by murdering an innocent person to satisfy his lust and there is enough evidence on record to prima facie show his involvement in the alleged crime, as such, rigour of Proviso (1) to Section 437 of the Criminal Procedure Code is attracted to the instant case having regard to the fact that the offence committed by the petitioner carries maximum punishment of death sentence. It has been contended

that the learned trial court, vide its order dated 21st December, 2024, has rightly declined to enlarge the petitioner on bail

12) A perusal of the record shows that the petitioner has been arrested in the instant case on 09.06.2012 and the challan against him was laid before the trial court on 08.08.2012. The record further shows that 23 witness have been cited in the challan, out of which the prosecution has examined as many as 20 witnesses and three prosecution witnesses are yet to be examined.

13) In the light of aforesaid facts, the question arises as to whether a person, who has been accused of having committed a heinous offence like murder, is entitled to be enlarged on bail on the ground of his long incarceration of about 14 years. This issue has been a matter of discussion before the Supreme Court in a number of cases including **Hussainara Khatoon vs. Home Secretary, State of Bihar**, (1980) 1 SCC 81, **Supreme Court Legal Aid Committee vs. Union of India**, (1994) SCC 731, **Umarmia vs. State of Gujarat**, (2017) 2 SCC 731, **Union of India vs. K. A. Najeeb**, (2021) 3 SCC 713, **Ashim alias Asim Kumar Haranth Bhattacharya vs. National Investigation Agency**, (2022) 1 SCC 695, and **Jagjeet Singh & Ors. Vs. Ashish Mishra @ Monu & anr.** 2021 LiveLaw (SC) 376. In all these judgments, the Supreme Court has observed that no accused can be subjected to unending detention pending trial, especially when law presumes him to be innocent until proven guilty. It has been further observed that even when

statutory provisions expressly bar the grant of bail after a reasonably long period of incarceration, such stringent provision will melt down.

14) Recently, the Supreme Court has, in the case of **Syed Iftikhar Andrabi vs. National Investigation Agency**, 2026 SCC OnLine SC 881, after analyzing its previous judgments on the issue, emphasized that the ratio laid down in **K. A. Najeeb's** case (supra), which is a three Judge Bench of the Supreme Court, is a binding precedent and any other judgment delivered by the benches of lesser strength of the Supreme Court do not change the legal position when it comes to grant of bail on the ground of long incarceration. Para (31) of the judgment is relevant to the context and the same is reproduced as under:

“31. In K.A. Najeeb, a three-Judge Bench of this Court was clear and unequivocal in holding that once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge the accused on bail. We have already extracted supra paragraph 17 of the said judgment where it has been clearly stated that the presence of statutory restrictions like Section 43D(5) of the UAP Act per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Whereas at the commencement of the proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigors of such provisions will ‘melt down’ where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. In the facts of that case, this Court observed that it was conscious of the fact that the charges levelled against the

accused were grave and a serious threat to societal harmony and had it been the case at the threshold, perhaps the Court would have outrightly rejected such a prayer. However, keeping in mind the duration of incarceration and the unlikelihood of the trial being completed in the near future, the accused had to be enlarged on bail.”

15) From the foregoing analysis of the legal position law laid down by the Supreme Court, it is clear that long incarceration of an undertail without any likelihood of conclusion of trial in near future infringes upon the right of speedy trial of such undertrial. While the Supreme Court has, in some cases, gone to the extent of quashing the trial itself but consistent view of the Supreme Court has been that in case the delay in conclusion of the trial amounts to oppression or harassment to an undertrial, the Court can interfere in such situations and grant bail to an accused in a heinous crime like murder also. While doing so, the Court has to take into consideration several factors like, length of delay, the justification for the delay, the accused's assertion of his right to speedy trial and prejudice caused to the accused by such delay. It is also clear that the Criminal Courts are not obliged to terminate the trial or criminal proceedings only on account of lapse of time and acquit the accused but in appropriate cases, the Court can grant appropriate relief or suitable directions in favour of the accused. Thus, in deciding bail applications, one of the important factors which should be taken into account is the delay in concluding the trial because if an accused is denied bail but is ultimately acquitted, nobody is going to compensate him for the

period he has spent in custody. Therefore, long incarceration of an accused may not be, by itself, a ground for grant of bail but it certainly becomes a ground for grant of bail to an accused, if the delay in conclusion of trial is attributable to the prosecution.

16) Turning to the facts of the present case, as already stated, the charges against the petitioner were framed by the learned trial court on 01.09.2012. A perusal of the minutes of the proceedings of the trial court would reveal that out of 23 cited witnesses, 20 witnesses have been examined by the prosecution during last more than 13 years and three more prosecution witnesses are yet to be examined.

17) A perusal of the trial court record would show that as back as on 07.02.2020, the learned trial court had noted that the accused are entitled to speedy trial which cannot be denied to them by the prosecution under the garb of production of witnesses. It was noted by the trial court that eight years had been consumed in completing the prosecution evidence and still there are 14 witnesses yet to be examined. The Investigating Officer of the case was directed to remain present before the court so as to ensure that other witnesses are produced before the Court.

18) In spite of aforesaid harsh order, it seems that the prosecution has not been able to produce the witnesses before the trial court with reasonable dispatch, as a result of which the prosecution evidence is still not complete. Although it does appear

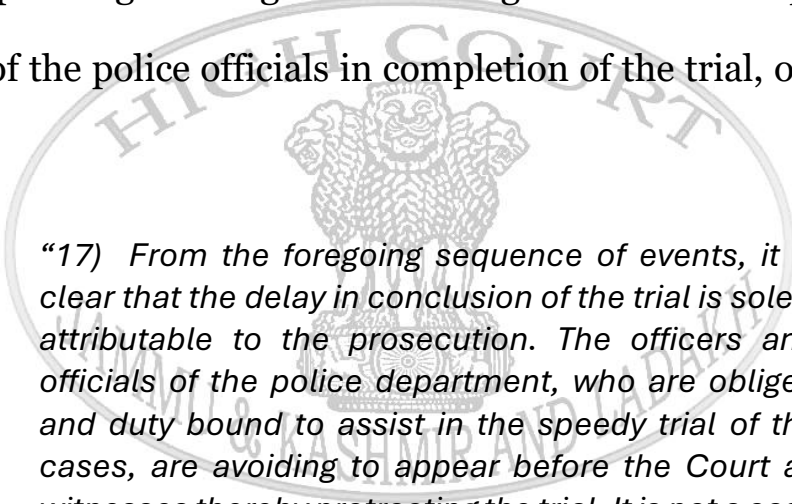
from the perusal of minutes of the proceedings that on a few occasions, even the defence has contributed to the delay as the counsel appearing for the accused has sought adjournment on a few occasions to examine the witnesses present, yet an overall analysis of the minutes of the proceedings would reveal that the delay in completion of prosecution evidence is largely attributable to the negligent conduct of the prosecution.

19) A perusal of the minutes of the proceedings dated 09.07.2024 would reveal that the prosecution was directed to ensure presence of PWs 22, 23 and 24 before the trial court and summons were issued to the said witnesses but only PW-23 has been produced by the prosecution, whereas PWs 22 and 24 are yet to be examined. On 17.10.2024, the learned trial court has noted that the case is pending since 2012 and while majority of the prosecution witnesses have been examined, the doctor and the Investigating Officer are not being produced. On the said date, a direction was issued to the Investigating Officer to remain present before the Court and to ensure the presence of other witness but neither the statement of the doctor nor the statement of the Investigating Officer has been recorded by the trial court as the said witnesses have failed to put in their appearance before the Court.

20) From the foregoing sequence of events, it is clear that conclusion of trial of the case is being delayed primarily because of non-appearance of the Investigating Officer before the trial

court. The Investigating Officer is an official of the Police Department, therefore, if due to his non-appearance before the trial court, the trial of the case is being delayed, the only party who is responsible for delay in trial is the prosecution itself. The officers and officials of the Police Department are obliged and duty bound to assist in the speedy trial of the cases and if they start avoiding to appear before the Court as witnesses, the trial is bound to be protracted.

21) This Court has, in the case of “**Manzoor Ahmad Mir vs. UT of J&K**” (Bail App No.109/2022 decided on 30.12.2022), while expressing its anguish with regard to non-cooperative attitude of the police officials in completion of the trial, observed as under:



“17) From the foregoing sequence of events, it is clear that the delay in conclusion of the trial is solely attributable to the prosecution. The officers and officials of the police department, who are obliged and duty bound to assist in the speedy trial of the cases, are avoiding to appear before the Court as witnesses thereby protracting the trial. It is not a case where some civil witnesses, who may have been won over by the accused and avoiding to depose in support of the prosecution but it is a case where even the police officials have scant regard for the process of the Court and they are avoiding to help the prosecution in speedy trial of the case. Without the cooperation and assistance of the prosecuting agency and the police department, the speedy trial will always remain a distant dream. The present case is a classic example of prolongation of the trial by the prosecuting agency and the police department whose officials are duty bound to render assistance in speedy trial of cases. It is high time that the respondents should put their house in order and instruct their officers and officials to render all

possible assistance in conclusion of criminal trials instead of blaming the Criminal Courts for the delay.

18) The trial court does have power to terminate the trial by closing the prosecution evidence but I am conscious of the fact that in heinous offences like murder, the Courts generally do not take this extreme step, particularly when the witnesses to be examined are material witnesses like witnesses to memo of disclosure and recovery and the investigating officer, as is the present case. The Courts refrain from closing the evidence in such cases as it amounts to failure of justice but this should not be taken as a device by the prosecution to protract the trial.”

22) In view of the foregoing discussion, it is clear that the delay in conclusion of the trial, in the present case, is largely attributable to the prosecution and having regard to the legal position discussed hereinbefore, long incarceration of the petitioner has resulted in violation of his right to speedy trial and, therefore, rigour of 1st Proviso to Section 437 of the Cr. P. C would not come in the way of considering the case of the petitioner for grant of bail as the said rigour, in the light of the ratio laid down by the Supreme Court in **K. A. Najeer's** case (supra) would melt down.

23) For what has been discussed hereinbefore, I find that the petitioner has carved out a case for grant of bail on account of his long incarceration of about 14 years and also on account of the fact that having regard to the conduct of the prosecution and the police department, there is hardly any chance of conclusion of trial in near future.

24) Accordingly, the application is allowed and the petitioner is directed to be released on bail subject to the following conditions:

- (I) That he shall furnish personal bond along with two local sureties in the amount of Rs. 1,00,000 (rupees one lac) each to the satisfaction of the trial court;
- (II) That, in case he has a passport, he shall surrender the same before the trial court and he shall not travel out of the Union Territory of Jammu and Kashmir without permission of the trial court;
- (III) That he shall not tamper with the prosecution evidence and he shall not indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial;
- (IV) That he shall appear before the trial Court on each and every date of hearing;

25) The application stands disposed of in above terms.

(SANJAY DHAR)
JUDGE

Srinagar,
08.07.2026
"Bhat Altaf-Secretary"

Whether the Order is speaking: Yes/No
Whether the Order is reportable: Yes/No

