

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

Bail App No. 93/2026 CrIM 818/2026

Reserved on: 14/08/2026.
Pronounced on: 27/08/2026.
Uploaded on: 31/08/2026.

Farooq Ahmad Shah

S/o. Mohammad Maqbool Shah

R/o. Halwani Salia Aishmuqam

District Anantnag

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

Through: Mr. Manzoor Ahmad Ganie, Advocate

Vs.

Union Territory of J and K Th.

SHO P/S Aishmuqam and Anr.

...Respondent(s).

Through: Mr. Ilyas Nazir Laway, GA for R1
None for R2.

CORAM:

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

1. Through the medium of the instant successive bail petition having been filed by invoking the provisions of Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023, ["BNSS" for short] corresponding to Section 439 of the repealed Code of Criminal Procedure, 1973 ["Code" for short], bail on behalf of the petitioner/accused in Case FIR No. 27 of 2021 under Sections 376, 506 IPC, 3/4 POCSO Act of Police Station Aishmuqam, has been sought on the main grounds that the petitioner has been falsely and frivolously implicated in the case FIR, who is innocent and has not committed the alleged offences. That he has earlier remained on interim bail in the case with effect from 06.09.2022 till 18.02.2026. That the trial of the case is going on before the Court of Ld. Principal Sessions Judge, Anantnag, ["Trial Court" for short] and all the listed material witnesses

including the alleged victim and her parents stand already examined at the trial. That the FIR in the case was registered after more than three months of the alleged occurrence, without assigning any explanation for such a huge delay. That the delayed lodging of the FIR in the case is a grave infirmity that goes to the root of the prosecution case. That the petitioner is the father of six children, including five daughters and one son.

That his earlier application for bail on health grounds, despite being extended from time to time, was finally declined on 18-2-2026, when he was remanded to District Jail Anantnag. That the subsequent bail application filed on behalf of the petitioner/accused on 4-3-2026 before the Id. Trial Court on health ground, as also the ground of protracted trial, came to be again rejected by the learned trial court on 8-4-2026 on the main ground that the petitioner/accused misused the concession of interim bail that was granted to him on health grounds by remaining absent at the trial proceedings, leading to the delay in examination of the prosecution witnesses. That the material witnesses examined at the trial have not supported the prosecution version of the case. That the investigating agency has not collected any cogent evidence or record regarding the age of the prosecutrix, which, as such, has remained disputed. That the alleged occurrence is reported to have taken place in January 2021 and the FIR was lodged on 20.04.2021 after a period of three months, during which period the alleged victim used to attend the tailoring training at the shop of the petitioner/accused without any hesitation. That the continued detention of the petitioner-accused since March, 2026 tantamounts to his pre-trial conviction and is violative of his fundamental right to life and personal liberty. That the petitioner-accused is suffering from various ailments and his health condition is likely to get deteriorated in confinement. That the petitioner is deeply rooted in the society and there is no question of his misusing the concession of bail by absconding at the trial. That he shall abide by any conditions that may be imposed by this court.

2. During the proceedings of the instant bail petition, the alleged prosecutrix was arrayed as party Respondent No. 2 in the matter, who came to be represented by his counsel, Mr. H. Furrahi, Advocate.

3. Learned counsel for the respondents were provided opportunity to file their objections but they did not choose to file the same.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the petitioner/accused, Mr. Manzoor Ahmed Ganie, Advocate, while reiterating his stand taken in the bail petition, submitted that the petitioner was falsely and frivolously implicated in the case FIR, who is innocent and has not committed the alleged offences. That he is a man of good character, commanding great respect in the society, as has also been stated by some of the prosecution witnesses at the trial. That the petitioner was earlier granted interim bail on health grounds, which was extended from time to time, and lastly the said concession was withdrawn, whereafter he filed a formal bail application before the learned trial court on justified grounds, but the same also came to be rejected by the learned trial court on 8-4-2026. He contended that the material witnesses, including the alleged prosecutrix and her parents, stand already examined at the trial.

6. The learned counsel further contended that even if the allegations against the petitioner accused can be supposed to be true for argument's sake, yet he is entitled to concession of bail, as primarily there is no statutory bar for grant of bail in the offences charged against him, and secondly, the discretion to be exercised by the Court is to be so exercised judiciously, keeping in mind the cardinal principle of bail jurisprudence that bail is a rule and its denial an exception, especially in cases which do not carry sentence of death or imprisonment for life in alternative and further, where there is nothing on the record to suggest that the accused is likely to misuse the concession granted in his favor.

He contended that the prosecution evidence is still in the process of being recorded and the trial of the case is likely to take much more time.

7. The learned counsel contended that the grant of bail in favor of the petitioner/accused will only transfer his custody into the hands of the sureties. He further contended that the petitioner is an aged and ailing person having four daughters and one son to maintain at his home, who have been badly suffering on account of his continued detention.

The learned counsel submitted that the petitioner shall abide by any conditions that may be imposed by this Court.

8. The learned counsel for the Respondent No. 1/State Mr. Ilyas Nazir Laway, Ld. GA, very vehemently contended that the petitioner accused does not deserve the concession of bail as he has misused the earlier special concession granted in his favor on health grounds by remaining continuously absent at the trial during the period of said interim bail, which delayed the examination of the prosecution witnesses.

He contended that the petitioner-accused had subjected a minor girl to sexual assault by misusing her trust who had gone to his shop for learning the tailoring. The Ld. State Counsel further contended that incriminating evidence has been led at the trial by the prosecution witnesses and, as such, the petitioner-accused is likely to flee from the clutches of law under the fear of conviction. He further contended that the grant of bail in favour of the petitioner-accused will further delay the trial of the case. He further contended that the petitioner-accused, after being released, is likely to confront the prosecutrix and threaten her as well as her family as they live in the same locality. The learned state counsel contended that the Hon'ble Apex Court and various other High Courts of the country, including this Court, has been time and again laying down the various guiding principles to be kept in mind for consideration of bail, viz. heinousness of the crime, severity of punishment, nature of evidence, likelihood of the accused misusing the concession of bail by absconding at the trial or by threatening the prosecution witnesses, impact of the

crime on the society, etc., etc. He contended that the petitioner-accused is facing trial for his charges u/s 376, 506 IPC, 3/4 POCSO Act, which are heinous in nature and highly antisocial.

9. The learned counsel for the respondent No. 2/Prosecutrix while resisting the bail petition submitted that the petitioner/accused does not deserve the concession of bail as he has committed heinous and anti-social offence with a minor girl who had been sent by her parents to his shop for learning tailoring, thereby abusing the trust reposed in him. He submitted that some of the prosecution witnesses are yet to be examined and the petitioner/accused being an influential person is likely to win-over the unexamined prosecution witnesses. He contended that the petitioner/accused and the family of the prosecutrix reside in the same area and, as such, his enlargement is likely to be a source of mental trauma for the victim and her family.

The learned counsel further contended that the petitioner/accused has misused the concession of bail, which was earlier granted by the Ld. Trial Court on his health grounds, by remaining absent at the trial of the case thereby prolonging the same. He contended that keeping in view the seriousness of the offences committed by the petitioner/accused and the impact of the crime on the society, the bail petition deserves to be rejected.

10. I have perused the record of the instant bail petition especially the copy of the order dated 08.04.2026 passed by the Ld. Trial Court while denying the prayer of the petitioner/accused for grant of regular bail to him.

11. I have also accorded an in-depth consideration to the rival arguments advanced on both the sides.

12. The petitioner/accused who is reported to be a tailor by profession, is alleged to have sexually assaulted the respondent No. 2/prosecutrix in the month of January, 2021 as she with some other girls used to attend his shop for learning tailoring. The First Information Report (FIR) in the case

came to be lodged by the father of the prosecutrix with the Police Station of respondent No. 1 on 20.04.2021. The investigation in the case FIR culminated into the filing of final police report/charge-sheet before the Id. Trial Court and the case is reported to be pending trial. The statements of the respondent No. 2/prosecutrix as also of her parents are reported to have been recorded at the trial of the case along with some other witnesses. As hereinbefore mentioned, the petitioner accused came to be formally charged by the Id. Trial Court for commission of offences punishable under Sections 376, 506 IPC, 3/4 POCSO Act vide order dated 11.08.2021 who pleaded not guilty to the same which led the Trial Court to direct prosecution to lead evidence in the case. The case is still at the stage of recording of the prosecution evidence. The interim bail that was earlier granted in the case to the petitioner/accused on medical grounds and extended from time to time, came to be withdrawn/not extended by the Ld. Trial Court on 18.02.2026 on the main ground that he misused the said concession by remaining generally absent at the trial leading to the delay in examination of the witnesses. There are only 11 listed witnesses in the prosecution case.

13. There is no statutory bar for grant of bail in the offences charged against the petitioner/accused. The offence under Section 376 IPC and 3/4 POCSO Act carry sentence of imprisonment for life disjunctive of death sentence thereby escaping the statutory bar under the provisions of Section 437 of the Code corresponding to Section 480 of BNSS. The presumptions under the POCSO Act do not restrict the discretion of the Court in the matter of consideration of bail.

14. The petitioner is reported to have misused the concession of temporary bail earlier granted in his favour on health grounds by remaining absent at the trial. However, there is nothing suggestive of the fact from the perusal of the scanned copy of the Trial Court record that the Id. Trial Court initiated the proceedings under law upon violation of the bail conditions. PW's 1 to 4 & 7 had already been examined at the trial prior to the passing of the order dated 08.04.2026 by the Ld. Trial

Court while refusing bail to the petitioner and subsequent thereto till the submissions of the scanned record on 03.06.2026 PW's 5 & 6 came to be examined at the trial. Now the remaining prosecution witnesses are believed to have been examined at the trial. It is true that the petitioner/accused has been facing trial in the case since 11.08.2021 when he was formally charged and more than five years have elapsed since then.

15. Through the medium of the instant successive petition filed before this Court, the petitioner/accused has sought his enlargement in the case on merits by pleading the grounds of his ill health, protracted trial and his innocence in view of the evidence adduced by the prosecution at the trial. The petitioner/accused has inter alia pleaded in his bail petition that he is deeply rooted in the society and there is no question of his misusing the concession of bail. He has further pleaded that he is not keeping good health and his family consisting of his five daughters and one son are badly suffering on account of his continued detention. He has submitted that he is ready to abide by any conditions that may be imposed by this Court while admitting him to bail.

16. This Court in the facts and circumstances of the case, especially having regard to the fact that the trial in the case is at its advanced stage, is of the opinion that it may meet the ends of justice in case the petitioner/accused is admitted to bail in the Case FIR in question subject to some reasonable terms and conditions.

17. Admittedly, in case of non-bailable offences which do not carry a sentence of death or imprisonment for life in alternative, bail is a rule and its denial an exception especially in cases where firstly the custodial questioning of an accused is not imperative for the logical and scientific conclusion of the investigation and secondly where there is nothing on record to show that the accused, if admitted to bail, will misuse the concession by tampering with the prosecution evidence, by non-

cooperation and association with the investigating agency and also by absconding at the trial.

18. Apart from the statutory bar, if any, the 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.

19. 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.

20. It is also well settled that the bar imposed under Section 480 of BNSS on the exercise of the discretion in the matters of bail subject to proviso contained in the section, is confined to the offences carrying a sentence of death or imprisonment for life in alternative and the offences carrying a sentence of imprisonment for life disjunctive of death sentence are exempted from the embargo.

21. 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: -

- 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;
- 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.

22. 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”.

23. It has been laid down by the Hon'ble Supreme Court in ***Sanjay Chandra vs. Central Bureau of Investigation AIR 20012 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.”

24. The Hon'ble Supreme Court in *Dataram Singh vs State of UP and Anr.* 2018 3 SCC 22 has held that even if grant or refusal of bail is entirely the discretion of a Judge, such discretion must be exercised in a judicious manner and in a humane way observing as follows:

“2. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large

number of decisions rendered by this court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstance of a case.

3. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when person has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge-sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure 1973.”

25. In ***Pankaj Jain vs Union of India and Anr. 2018 5 SCC 743*** the Hon'ble Supreme Court has held that the grant of bail has to be exercised compassionately. Heinousness of crime by itself cannot be the ground to outrightly deny the benefit of bail if there are other overwhelming circumstances justifying grant of bail. The Hon'ble Apex Court in its Judgments cited as ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra AIR 2011 SC 312*** and ***Sushila Aggarwal and Ors. Vs. State (NCT of Delhi) and Anr 2020 SC online 98***, has interpreted law even on the subject of anticipatory bail with a very wide outlook and while interpreting concept of liberty guaranteed under Article 21 of the Constitution of our Country in a flexible and broader sense.

26. This Court is conscious of the legal position that offences under Sections 376 IPC and 4 of POCSO Act charged against the petitioner/accused carry a sentence of life imprisonment owing to which fact attraction or otherwise of the bar under Section 480 of BNSS, corresponding to Section 437 of the Code is to be addressed to. As hereinbefore mentioned, the bar imposed under Section 480 of BNSS is not confined to the cases where the imprisonment for life is provided as an alternative punishment disjunctive of death penalty. I deem it proper to reproduce the relevant extracts of the pronouncements of the Hon'ble Apex Court and also of this Court to the clarification of the issue: -

Gurucharan Singh & Ors. Vs. State (Delhi Administration)

AIR 1978 SC 179

“If a police officer arrests a person on a reasonable suspicion of commission of an offence punishable with death or imprisonment for life and forwards him to a Magistrate, the Magistrate at that stage will have no reasons to hold that there are no reasonable grounds for believing that he has not been guilty of such an offence. At that stage, unless the Magistrate is able to act under the proviso to section 437 (1), bail appears to be out of the question. The only limited inquiry may then relate to the materials for the suspicion. The position will naturally change as investigation progresses and more facts and circumstances come to light section 439 (1) on the other hand, confers special powers on the High Court or the court of Sessions in respect of bail. Unlike under section 437(1) there is no ban imposed under section 439 (1) against granting of bail by the High court or the Court of Sessions to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the court of Sessions will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even the Court of Sessions will have to exercise its judicial discretion in considering the question of granting of bail under section 439 (1) The overriding considerations in granting bail which are common both in the case of section 437 (1) and section 439 (1) are the nature and gravity of the circumstances in

which the offence is committed, the position and the status of the accused with reference to the victim and the witnesses, the likelihood of the accused fleeing from justice of repeating the offence of jeopardizing his own life being faced with a grim prospect of possible conviction in the case, of tampering with witnesses, the history of the case as well as of its investigation and other relevant grounds which in view of so many variable factors, cannot be exhaustively set out. The two paramount considerations viz likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a court of justice. It is essential that due and proper weight should be bestowed on these two factors apart from others.”

Jawahar Barwa Vs. State of J&K, 1973 JKLR 74

“Cases are conceivable in which a person is accused of an offence punishable with imprisonment for life or in the alternative with imprisonment for a lesser term. To quote some instances take for example the offences under section 371, 372 and 376 IPC all of which are punishable with imprisonment for life or imprisonment of either description for ten years and fine. The question arises, as in fact it was raised by Mr. Beg, appearing for the petitioner, whether the restriction imposed in section 497 (1) Cr.P.C. providing that no bail should be granted where there are reasonable grounds for believing that the accused is guilty of an offence punishable with imprisonment for life, applies equally to such cases. The object of the law in providing an alternate punishment seems to be to leave room for the court to impose a lesser punishment than imprisonment for life where, in its opinion, there are some extenuating circumstances which lessen the gravity of the offence. As a corollary it must follow that the restriction imposed by section 497 (1) is not intended to cover a case involving an offence punishable with imprisonment for life and in the alternative imprisonment for a lesser term if there are extenuating circumstances which lessen the gravity of the offence. Even so the court may decline to enlarge the accused on bail in such case as in other cases involving non-bailable offences where larger interests of the state or of the public so demand or because there is reasonable possibility of the accused absconding or tampering with the witnesses or for similar other consideration.....”

Assadullah Khan and ors v/s State, SLJ 1980 J&K 31

“The very fact that an offence u/s 376 RPC was punishable “with imprisonment for life or ten years” amply makes out the distinction between the categories of cases of this class and those which fall within the category where punishment provided is death or life imprisonment. It could not be correct to equate offences punishable with imprisonment for life or 10 years in their gravity and seriousness and in matter of bail with those as are punishable either with death or imprisonment for life. The bar for setting out on bail was complete in respect of offences which are punishable either with death or imprisonment for life. That bar in law could not be extended to any other offence.”

Mohinder Singh vs. State, KLJ 1987 237

“Therefore, the rule of caution for granting bail is in respect of any non-bailable offences which carry punishment of either death or life. The proviso, therefore, classifies the offences on the basis of punishment as there are huge number of offences which are non-bailable some of them defined heinous. First category comes murder u/s 302 RPC while under section 371,372,376,377 RPC etc. Comes later. Thus, latter portion of clause (1) section 497 Cr.P.C excludes the offences which carry sentences for life or 10 years which we are concerned here. The gravity of the charge under Murder is definitely grave. Therefore, punishment provided is death or life with no other alternative, the forceful portion of the clause 1st of section 497 Cr.P.C. is, therefore, to be read in isolation while the first portion of the clause (1) of section 497 Cr.P.C. which gives a clear command as in section 498 Cr.P.C. for granting the bail. But even u/s 498 Cr.P.C. the latter portion of the 1st proviso has its play and it should be deemed a ride while granting bail u/s 489 Cr.P.C. in non-bailable offences carrying death penalty or life imprisonment. Therefore, there is clear distinction between offences which carry punishment of death or life and offense which carry life and 10 years. This demarcation is very much embedded in clause (1) of section 497 Cr.P.C. In this view of the matter. I am not at all in agreement with the counsel for the complainant that the life imprisonment provided as punishment u/s 377 RPC should be regarded with equal force with offences which carries the punishment of death penalty or life. In my opinion the offences u/s 371,372, 376 and 377 RPC and other carrying

similar punishment are out of the clutches of last clause of (1) of section 497 Cr.P.C. The bail in this case is, therefore, to be considered on its own merit without applying the rider indicated in clause (1) of section 497 Cr.P.C.”

Satyan, Petitioner Vs. State, Respondent CrLJ 1981 1313

“The Magistrate is not justified in holding that he has no power to grant bail to a person accused on the sole ground that the offence is punishable with imprisonment for life.

The prohibition against granting bail is confined to cases where the sentence is either death or alternatively imprisonment for life. The expression “offence punishable with death or imprisonment for life” in section 437 (1) does not extend to offences punishable with imprisonment for life only (1926 27 Cr.L.J. 401 (Rang) and 1926 27 Cr.L.J 1063 (Nag) Re1.

The legislature has made a liberal approach in the matter of granting bail and has shown its disapproval in the matter of keeping an accused person in custody in cases where he is ordinarily entitled to bail. The purpose of keeping a person in custody is to ensure his appearance in court at the time of trial and that he is also made available for the purpose of execution of the sentence. The purpose is not penal in character”

27. This Court is also conscious of the fact that provisions of Section 29 of the POCSO Act presume commission, abetment or attempt of offences defined under Sections 3,5,7 and 9 of the said Act, in any prosecution against an accused for commission, abetment and attempt of said offences. The provisions of Section 30 of the POCSO Act, also presume existence of the culpable mental state of the accused in any prosecution for any offence under the said Act, which requires a culpable mental state on the part of the accused. However, the accused’s right in defense to prove that he had no such mental state with respect to the act charged as an offence is being protected under the provisions of the aforementioned Section 30 of the POCSO Act.

28. It is also true that as per the Section 31 of the POCSO Act, the provisions of the Code including the provisions as to bail and bonds are

applicable in the proceedings before a Special Court under the POCSO Act.

29. The presumptions under Sections 29 and 30 of the POCSO Act are not absolute but are rebuttable presumptions. Such provisions of the Act are to be considered at the conclusion of the trial and they do not operate as a bar for grant of bail. Such presumptions are in the form of an additional advantage to the prosecution and do not absolve the prosecution from proving the foundational facts of its case. No doubt it is for the accused to prove his innocence after the prosecution establishes its case in terms of the foundational facts.

30. The offence under Section 376 IPC charged against the petitioner/accused carries a rigorous imprisonment of not less than 10 years, but which may extend to imprisonment for life and with fine. The offence punishable under 4 of the POCSO Act also charged against the petitioner/accused carries a maximum punishment of life imprisonment.

So, in view of the punishments provided for the offence of rape under Section 376 IPC and for the offence of penetrative sexual assault under Section 4 of the POCSO Act, the bar created under Section 480 of BNSS is not attracted.

31. Admittedly, the offences charged against the petitioner/accused are heinous in nature and highly antisocial. A murderer destroys the physical body of a victim, but a rapist destroys the very soul of the victim. Society looks with great apathy and hatred an unchaste girl and it is immaterial whether she becomes so by a voluntary act or under force or compulsion.

32. For the foregoing reasons, the application is allowed and the petitioner/accused is admitted to bail in the case FIR No. 27/2021 of Police Station Aishmuqam Anantnag subject to his furnishing of surety and personal bonds each in the amount of Rs. 1 Lac (surety bond of Rs. One Lac to be furnished by two persons from among the near relatives of the petitioner/accused each liable in the amount of Rs. 50,000/-) to the satisfaction of the Ld. Registrar Judicial of this Court and the

Superintendent of the Jail concerned for assuring the fulfillment of the following conditions:

- 1) The petitioner/accused shall remain punctual at the trial of the case.
- 2) The petitioner/accused shall not directly or indirectly make any inducement, threat or promise to the unexamined prosecution witnesses so as to dissuade them from making their statements at the trial of the case.
- 3) The petitioner/accused shall not leave the limits of India without the prior permission of the Id. Trial Court and shall not repeat the commission of any crime.
- 4) The petitioner/accused shall not intentionally confront the victim or any of his family members

33. In case the requisite surety/bail bonds are furnished and attested, the Registry shall issue a formal release order directing the Superintendent of the Jail concerned where the petitioner/accused is lodged to release him from the custody in the instant case subject to furnishing of his requisite personal bond to the satisfaction of the Superintendent of the Jail concerned.

34. The observations in this order have been so made for the limited purpose of disposal of this bail application filed under Section 483 of BNSS (439 of Code) and shall not be construed as any interference or prejudging of the merits of the case, to be decided at the conclusion of the trial.

35. **Disposed of.**

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR
27.08.2026
Shahid Manzoor

Whether the judgment is speaking	Yes
Whether approved for reporting	Yes