

S. No. 02
Regular Cause List

INTHE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App 135/2025

UNION TERRITORY THROUGH POLICE
STATION TRAL

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

Through: Mr. Furqan Yaqub, GA

Vs.

MOHAMMAD SHAFI MIR

...Respondent(s)

Through: M/s Aftab Ahmad, Advocate and M. Saleem, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
22.05.2026

1. The impugned order dated 21.04.2025 passed by the learned Special Court under the Protection of Children from Sexual Offences Act, i.e., the Principal Sessions Judge, Pulwama, is assailed by the petitioner—Union Territory of Jammu and Kashmir on the ground that the Trial Court has erroneously enlarged respondent No. 2 on bail in a case involving offences under Section 137 of the Bharatiya Nyaya Sanhita and Sections 3/4 of the POCSO Act.
2. The prosecution contends that the order granting bail is cryptic and fails to take into account the gravity and heinousness of the allegations, particularly when the victim, alleged to be a deaf and dumb child, was subjected to penetrative sexual assault. It is further argued that material witnesses were yet to be examined and, therefore, the Trial Court ought not to have exercised discretion in favour of the accused.
3. Per contra, learned counsel for respondent submits that the prosecution case itself creates serious doubt regarding the applicability of the POCSO Act. It is pointed out that neither during

investigation nor during trial was the victim examined, despite there being legal mechanisms available for recording the statement of a differently-abled victim through an interpreter or other assistance. It is also submitted that the medical record reflects the age of the victim as 18 years at the relevant time and even the mother of the victim has stated so. According to the respondent, the reliance placed upon the Aadhaar Card by the prosecution cannot conclusively determine age, particularly when, under the Juvenile Justice Act, the school record is the primary material for age determination.

4. Having heard learned counsel for the parties and upon perusal of the record, this Court finds merit in the submissions advanced on behalf of respondent. The record reveals that the victim was neither cited nor examined as a witness during investigation or trial. Merely because the victim was deaf and dumb could not have precluded the investigating agency or the concerned authorities from facilitating his examination with the assistance of an interpreter or any other legally permissible aid.
5. The material placed on record further shows that the victim was stated to be 18 years of age in the medical record at the relevant time. Though learned counsel for the petitioner relied upon the Aadhaar Card to contend otherwise, such material by itself cannot conclusively determine age in view of the statutory scheme governing age determination. More importantly, even the mother of the victim appears to have stated that the victim was 18 years old, thereby casting doubt upon the prosecution case insofar as the applicability of the provisions of the POCSO Act is concerned.
6. It is also not disputed that the respondent has remained in custody since 30.10.2024 and that the material witnesses, including the mother of the victim, have already been examined. The remaining witnesses are stated to be formal or official witnesses. In such circumstances, the Trial Court exercised its discretion to enlarge the respondent on bail, keeping in view the prolonged incarceration and the likely delay in conclusion of the trial.

7. At this stage, the scope of consideration is limited to whether the discretion exercised by the Trial Court suffers from perversity, arbitrariness or patent illegality warranting interference by this Court. The argument regarding reverse presumption under the POCSO Act is a matter to be considered during trial and cannot, by itself, justify cancellation of bail already granted, particularly where arguable doubt exists regarding the age of the victim.
8. In view of the aforesaid circumstances, this Court is of the considered opinion that the petitioner—UT of Jammu and Kashmir has failed to make out a strong case for cancellation of bail. The discretion exercised by the Trial Court cannot be said to be improper or contrary to law.
9. Accordingly, the petition is dismissed along with connected applications. However, the Trial Court is directed to expedite the proceedings and conclude the trial at the earliest.

(SANJAY PARIHAR)
JUDGE

Srinagar
22.05.2026
"Imtiyaz"