

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

Bail App.No. 133/2026

GHULAM NABI RATHER AND ANOTHER

.....Petitioner(s)

Through: Mr.Parvaez Ahmad Wani, Advocate
Mr. Lone Altaf, Advocate

V/s

**UNION TERRITORY OF J AND K THROUGH SENIOR
SUPERINTENDENT OF POLICE GANDERBAL AND
ANOTHER**

... ..Respondent(s)

Through : Mr.Mohsin Qadri, Sr.AAG
with Mr. Harris, Asstt.Counsel

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

22.07.2026

1. Through the medium of the present petition, the petitioners are seeking bail in anticipation of their arrest in FIR No.102 of 2026 for offences under Sections 329(3), 115(2), 74 and 109 of the Bharatiya Nyaya Sanhita (BNS), registered with Police Station Ganderbal.
2. Issue notice to the respondents.
3. Mr.Mohsin Qadiri, Sr.AAG enters appearance on behalf of the respondents. Learned Sr.AAG appearing on behalf of the respondents has raised a preliminary objection with regard to maintainability of the petition on the ground that the petitioners had approached the Court of learned Chief Judicial Magistrate,

Ganderbal for grant of regular bail in the same FIR and the said application has been rejected by the learned Chief Judicial Magistrate vide order dated 21.07.2026. Therefore, the present application seeking bail in anticipation of their arrest is not maintainable.

4. Heard and considered.

5. It appears that the petitioners had initially approached the Court of learned Principal Sessions Judge, Ganderbal by way of an application seeking bail in anticipation of their arrest in the aforesaid FIR. On 18.06.2026, the learned Sessions Judge while issuing notice to the Investigating Agency passed an ex-parte order providing that the petitioners shall be released on bail if they are not involved in offences carrying death penalty or imprisonment of more than seven years or if they are not involved in an offence under NDPS Act, Explosive Substances Act, offence triable by Special Court under NIA Act, MMDR Act, Rape, POCSO Act. At the same time, the Public Prosecutor was directed to obtain report from the concerned police station. After receipt of report from the concerned police station, the Learned Sessions Judge vide his order dated 07.07.2026, rejected the bail application of the petitioners on the ground that offence under Section 109 BNS carries punishment extending up to 10 years, as such, the interim anticipatory bail order dated 18.06.2026 would not apply to the case of petitioners. Learned

Sessions Judge also observed that because investigation of the case is at initial stage, therefore, the petition deserves to be rejected. However, the Learned Sessions Judge protected the petitioners for a period of 10 days in terms of order dated 18.06.2026.

6. It seems that the petitioners approached the Court of Learned Chief Judicial Magistrate, Ganderbal seeking regular bail upon their surrender before the said Court. The learned Chief Judicial Magistrate, having regard to the seriousness of the allegations made against the petitioners in the impugned FIR, the stage of the investigation and the necessity of petitioners being subjected to custodial interrogation, rejected the bail application of petitioners in terms of order dated 21.07.2026.

7. The issue that arises for consideration is as to whether the present application for grant of bail in anticipation of arrest is maintainable once the petitioners had surrendered before the Court of learned Chief Judicial Magistrate, Ganderbal. Before dealing with this issue, this Court would like to observe that the learned Chief Judicial Magistrate by allowing the petitioners to remain out of custody of the said Court after dismissal of their application, has not acted in accordance with the law. Once the petitioners had surrendered before the Court of Learned Chief Judicial Magistrate Gandharbal, it was incumbent upon the said Court to either release the petitioners on interim bail till the disposal of the bail application

or to remand them to judicial custody during the pendency of the application. Instead of doing so, learned Chief Judicial Magistrate considered application of the petitioners on merits and did not make any order with regard to the further custody of the petitioners, as a result of which, at present the petitioners are roaming free while they have approached this Court by way of present bail application.

8. It is to be noted that once the petitioners filed a regular bail application before Learned Chief Judicial Magistrate, Ganderbal by surrendering before the said Court, they are deemed to be in custody of the said Court. Upon dismissal of their regular bail application, the petitioners were obliged to submit themselves to the further orders of the Chief Judicial Magistrate by surrendering before the said Court or before the investigating agency. Instead of doing so, they have approached this Court by way of a fresh anticipatory bail application after having flouted the orders of the Chief Judicial Magistrate and the interim protection granted by Principal Sessions Judge Ganderbal, which had by the time the learned Chief Judicial Magistrate passed order dated 21.7.2026, long expired.

9. It is a settled law that an accused who has absconded and has not surrendered either before the investigating agency or before the Court which had granted him interim protection, cannot maintain a fresh application seeking bail in anticipation of his arrest, as the

same would amount to abuse of process of Court. This is what has been done by the petitioners in the instant case.

10. In view of the aforesaid discussion, the present application is held to be not maintainable and is dismissed accordingly, leaving it open to the petitioners to surrender before the investigating agency or Chief Judicial Magistrate, Ganderbal and move a fresh bail application for grant of regular bail.

SRINAGAR
22.07.2026
Sarveeda Nissar



(SANJAY DHAR)
JUDGE

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