

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

Pronounced on:05.06.2026

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*Whether the operative part or full
order is pronounced: **Full***

Bail App No.69/2024

FAIZAN FIDA BHAT

...PETITIONERS/APPELLANT(S)

Through: - Mr. Danish Majeed Dar, Advocate, with
Ms. Mehjabeen & Ms. Monisa Manzoor, Advocates.

Vs.

UT OF J&K AND ANR.

...RESPONDENT(S)

Through: - Mr. Mohsin Qadiri, Sr. AAG, with Mr. Haaris Khan & Ms. Maha
Majeed, Assisting counsels-for R1&R2.
Ms. Urfana Mursalat, Advocate-for R3.

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

JUDGMENT(ORAL)
05.06.2026

1) The petitioner, who is facing trial for offences under Section 302, 120-B IPC and 7/27 Arms Act in a case arising out of FIR No.03/2021 of Police Station, Khanyar, Srinagar, has moved the instant application for grant of bail.

2) In the application, it is contended that as per the evidence recorded by the trial court, the petitioner is not shown to be involved in the murder of deceased Ziyar. It has been further contended that from the evidence led by the prosecution in the case, it is confirmed that the petitioner did not inflict any injury upon the deceased and that presence of the petitioner at the

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scene of occurrence was accidental. It has further been contended that, in fact, as per the evidence on record, the petitioner was himself attacked by the complainant party which resulted in serious injuries to him. It has been contended that continued incarceration of the petitioner violates his fundamental right to personal liberty as guaranteed by the Constitution. According to the petitioner, he has been in incarceration for the last more than five years and there is no likelihood of conclusion of trial in the near future. Therefore, on this ground alone, he is entitled to bail.

3) The respondent-State as well as the complainant, Mohammad Ashraf Chasti, who has been impleaded as party to the present application in terms of order dated 03.12.2025, have contested the present application by finding their separate replies. The respondent-State, in its reply to the bail application, has contended that there is sufficient evidence on record to show that the petitioner was involved in murder of the deceased and that this aspect of the matter is confirmed from the statements of the eye witnesses recorded during trial of the case. It has also been contended that the bail application of the petitioner was dismissed by the learned 1st Additional Session Judge, Srinagar (for short “the trial court”), on 16.07.2024 and thereafter, there has been no change of circumstances, the circumstances that would give fresh

cause/ground to the petitioner to apply for bail. It has been submitted that as per the evidence available on record, there are reasonable grounds for believing that the petitioner is involved in committing the offense of murder, as such, he is not entitled to bail. It has been further contended that the petitioner is involved in a heinous offense, as such, grant of bail to him at this stage would endanger and threaten the prosecution witnesses, some of whom are yet to be examined by the trial court.

4) Respondent No.3, the complainant, in his objections to the bail application has submitted that there is sufficient evidence on record of the trial court that would show the involvement of the petitioner in the crime. It has been submitted that at the stage of considering a bail application, a detailed examination of the evidence led by the prosecution cannot be undertaken, and that the evidence so far led by the prosecution clearly implicates the petitioner in the alleged crime, which is heinous in nature. It has been further submitted that prosecution witnesses are local and vulnerable to influence, therefore, there is a reasonable apprehension that if the petitioner is enlarged on bail, he would tamper with the prosecution evidence and intimidate the witnesses.

5) I have heard learned counsel for the parties and I have also gone through record of the trial court.

6) As per the prosecution case, on 11.01.2021 at 21.50 hrs., Police Station, Khanyar, received an information from reliable sources to the effect that some unknown persons have stabbed another unknown person with the intention to kill him near Dastageer Sahib Shrine, as a result of which the victim has got seriously injured. It was also reported that the victim was taken to the hospital by some pedestrians for medical treatment but he succumbed to the injuries on way to the hospital. On the basis of this report, FIR No.03/2021 for offences under Section 302/120-B of IPC was registered at Police Station, Khanyar, and investigation was set into motion. During investigation of the case, one blood stained knife was recovered from the site of occurrence and besides this, one iron rod (jack rod) was also recovered therefrom. The police also recovered and seized vehicle bearing registration No.JK01W-2657, in which the accused had travelled to the site of occurrence. One of the accused, namely Faizan Fida Bhat, the petitioner herein, was also found in an injured condition and he was referred to hospital for treatment. The mobile cell phones of co-accused Mohammad Zaid and the deceased, as well as his brother Afaq, were seized and the post-mortem of the deceased was conducted. The police also preserved the CCTV footage of the site of occurrence. The statements of the witnesses acquainted with the facts and circumstances of the

case, were also recorded. The call details of the mobile phones of both the complainant party and the accused party were obtained.

7) After investigation of the case, it came to light that the cause of dispute between the parties was that accused Mohammad Zaid had purchased clothes worth Rs.4500 from deceased Ziyen on credit. It was found that when father of deceased Ziyen had gone to the shop of brother of accused Zaid for demanding money, the petitioner herein showed brute attitude to him and abused him. This was narrated by him to his son, deceased Ziyen, who in turn narrated the same to his brother Afaq. There was an exchange of hot words between Afaq and the accused, as a result of which both the accused got enraged. This exchange of hot words had taken place on telephone. It was found that the accused had hatched a conspiracy with each other to kill Ziyen and Afaq and in this regard, they armed themselves with knife and an iron rod, whereafter they boarded a vehicle and took Wajid along with them. It was found that that the petitioner took out iron rod from the vehicle and tried to attack the deceased and his brother Afaq but he was prevented from doing so by the complainant party, whereafter co-accused Zaid stabbed deceased Ziyen which resulted in his death.

8) After investigation of the case, the charge sheet was laid before the trial court on 08.04.2021 and the charges came to be framed against the petitioner and co-accused accused on 10.08.2021. It appears that out of 45 witnesses cited in the challan, as many as 28 witnesses have already been examined by the trial court uptill the date of summoning of record of the trial court by this court.

9) It seems that the petitioner had approached the learned trial court for grant of bail vide his application filed on 16.12.2022. The said application has been dismissed by the learned trial court vide its order dated 16.12.2024, whereafter the petitioner has filed the present application.

10) Before discussing the grounds urged by the petitioner for grant of bail in his favour in the light of the facts narrated hereinbefore, it is necessary to notice the legal position relating to grant of bail in heinous offences like murder.

11) The consistent view of the Supreme Court as well as of this Court, is that the matters to be considered in a bail application for grant of bail are as follows:

1. *Whether there is a, prima facie, reasonable ground to believe that the accused had committed the offence;*
2. *Nature and gravity of the charge;*
3. *Severity of punishment in the event of conviction;*
4. *Danger of accused absconding or fleeing, if released on bail;*
5. *Character, behavior, means, position and standing of the accused;*

6. *Likelihood of the offence being repeated;*
7. *Reasonable apprehension of the witnesses being tampered with;*
8. *Danger of course of justice being thwarted by grant of bail;*

12) So far as the instant case is concerned, the petitioner is facing the charge of murder which is punishable with death sentence or imprisonment for life. The Supreme Court in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another, (2004) 7 SCC 528**, while laying down the guidelines for grant or refusal of bail in serious offences like murder, has observed as under:

“11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the Court in support of the charge; (See Ram Govind Upadhyay Vs. Sudarshan Singh and others and Puran Vs. Rambilas and another.

12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for

grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted. (See Ram Govind Upadhyay, supra)

13) In the aforesaid judgment, the Supreme Court has also observed that the conditions laid down in Section 437(1)(i) of Cr. P. C are sine qua non for granting bail even under Section 439 of the Code, meaning thereby that in a case where a person is alleged to be involved in an offence punishable with death sentence or imprisonment for life, he cannot be released on bail if there appear reasonable grounds for believing that he has been guilty of such an offence. So, the petitioner in the instant case, in order to succeed in making out a case for grant of bail in his favour on merits, has to satisfy this Court that on the basis of the evidence led by the prosecution and the evidence that is proposed to be led by the prosecution, there is absence of reasonable grounds for believing that he has committed the offence.

14) Learned counsel for the petitioner has taken this Court through the statements of the prosecution witnesses recorded before the trial court. He has particularly referred to the statements of P-W1 Owais Abas Bhat, PW-2 Syed Afar Qadiri, PW-4 Imtiaz Ahmed Misger, PW-5 Constable Nazir Ahmad, PW-7 Muhammad Adil Qadri, PW-8 Peer Naseem Shah, PW-9 Shafat

Ahmad Beigh, PW-10 Shabir Ahmad Lone, PW-11 Rafiq Ahmad Khan, PW-16 Arshad Hussain and PW Fida Ahmed Bhat, to support his contention that the petitioner was not involved in the actual stabbing of deceased and his consequent death. The learned counsel, while referring to the statements of these witnesses, has laid much emphasis on the fact that the petitioner was himself mercilessly beaten by the complainant party, which shows that it is not a case of murder, but it is a case of culpable homicide not amounting to murder because death of the deceased had taken place during a sudden fight, which had erupted on account of exchange of hot words between accused and the complainant party. On this ground, it has been submitted that from the evidence on record, it can safely be stated that there are reasonable grounds for believing that the petitioner is not guilty of offence of murder.

15) Before testing the merits of the contentions raised by learned counsel for the petitioner, it has to be borne in mind that a detailed examination of the evidence is to be avoided while considering the question of bail to ensure that there is no pre-judging and no prejudice. If we have a look at the statements of the eyewitnesses to the occurrence, namely, PWs Owais Ahmad Bhat, Syed Afaq Qadri and Imtiaz Ahmad Misger, it is revealed that all these witnesses have stated that at the place of occurrence, the petitioner took an iron rod from

his vehicle and turned towards deceased Ziyar and Afaq, whereafter he tried to inflict a blow of iron rod upon them, but he was prevented from doing so by the witnesses from the complainant party who were present on spot. It also appears that there is evidence on record to show that the petitioner had brought the iron rod in his vehicle and he was accompanied by the accused Zaid, who was armed with a knife. Both of them came to the spot of occurrence together, after they had exchange of hot words on telephone with the deceased. Prima facie, from this evidence on record, it is shown that the act of the petitioner and the co-accused was not spontaneous but it was premeditated. This inference is supported by the circumstance that both the accused came on spot together armed with knife and iron rod.

16) At this stage, it is not open to this Court to meticulously analyze the statements of the eyewitnesses. However, a cursory look at the statements of prosecution witnesses does reveal that it was a preplanned and premeditated attack launched by the petitioner and co-accused upon the deceased. Thus, merits of the contention of the petitioner that it is not a case of murder, but it is a case of culpable homicide not amounting to murder, cannot be determined at this stage. The petitioner may succeed in convincing this Court to hold that it is a case of culpable homicide not amounting to murder, at the time of

final decision of the case when meticulous analysis of the evidence on record is permissible, but at this stage, minute analysis of the evidence on record is impermissible in law. In the face of the fact that all the four eyewitnesses to the occurrence have, prima facie, supported the prosecution version, the contention of the petitioner cannot be accepted.

17) That takes us to the next ground urged by learned counsel for the petitioner which relates to long incarceration of the petitioner and non-conclusion of the trial. In this context, it is to be noted that the challan was filed before the trial court at a time when Covid Pandemic was at its peak. The minutes of the proceedings of the learned trial court would reveal that physical functioning of the courts was not taking place and in the absence of robust and reliable means of internet connectivity, the proceedings were being conducted through WhatsApp video calls. In these circumstances, the physical production and even virtual production of the accused before the trial court was seriously hampered for a pretty long time, as a result whereof, the production of witnesses before the trial court and even production of the petitioner and co-accused before the trial court on each and every date of hearing became a challenge for the authorities. The record further shows that the situation continued to be so uptill initial period of the year 2022, which impeded the production of prosecution witnesses

before the trial court on regular basis. The record shows that after the situation normalized when Covid Pandemic receded, the prosecution has been producing its witnesses at regular intervals and the pace of trial has picked up. The record also shows that most of the material witnesses have been examined by the trial court and only a few formal witnesses are yet to be examined.

18) In the face of aforesaid material on record, it cannot be stated that there has been any delay in progress of the trial which can be attributed either to the court below or to the prosecution. Thus, in the facts and circumstances of the case, it cannot be stated that the right of speedy trial of the petitioner stands violated in the instant case. On this ground also, the petitioners do not deserve the concession of bail.

19) For what has been discussed hereinbefore, I do not find any merit in this petition. The same is dismissed accordingly. However, the learned trial court is directed to expedite the trial of the case so that the challan is finally disposed of at the earliest.

20) Copy of this order be sent to the learned trial court for information and compliance.

(SANJAY DHAR)
JUDGE

Srinagar,
05.06.2026
"Bhat Altaf-Szegy"

Whether the JUDGMENT is reportable: **Yes/No**
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