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

**(through virtual mode)**

Bail App No. 22/2026

***Pronounced on: 05.11.2026***
***Uploaded on: 05.11. 2026***
*Whether the operative part or full judgment is pronounced:* ***Full***

1. **Anoop. M,** Age 26 years S/o Mohanan. B
R/o Anoop Bhavanam, Village Kareepra,
P.O. Vakkanadu, Tehsil Kottarakkara,
District Kollam, Kerala - 691509
Presently posted with 63 RR Battalion
C/o 56 APO

…Petitioner(s)/Appellant(s).

Through: Mr. Jasbir Singh Jasrotia, Advocate with
Mr. Arun Pratap Singh, Advocate

**Vs.**

1. **UT of Jammu & Kashmir**, Through S.H.O./Incharge Police Station, Bari Brahmana, Samba
2. **Miss X** Prosecutrix/Complainant of case FIR No. 0145 of 2025 of P/S Bari Brahmana, Jammu

...Respondent(s).

Through: Mr. Vishal Bharti, Dy. AG with
Mr. Vivek Mattoo, Advocate for R-1

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

**JUDGEMENT**

05.11.2026

1. Through the medium of the instant successive bail petition, having been filed in terms of the provisions of Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS" for short), corresponding to Section 439 of the erstwhile repealed Code of Criminal Procedure, 1973 ("Code" for short), the petitioner-accused has sought bail in his favour in case FIR No. 0145/2025 dated 23.09.2025 of Police Station Bari Brahmana, Samba, on the grounds, *inter alia*, that he is a citizen of India and a serving army personnel entitled to seek

enforcement of his fundamental as well as statutory legal rights. That he was arrested on 30.09.2025 by the respondent-Police Station in connection with the aforementioned case FIR, which came to be registered against an unknown person, when he is innocent and has not committed the alleged offence. That he has been languishing in District Jail Kathua since 09.10.2025. That he is of the age of only 26 years and is serving soldier/sephoy of the Indian Army with his enrollment No. 23003704M, dated 12.03.202 of the Army Air Defence Corps, who, after the completion of his training, came to be posted with 323 Army Air Defence Regiment on 11.08.2021. That on 06.03.2024, he was posted with 63 RR Battalion operating in Kalakote Sector of UT of Jammu and Kashmir and is still serving in 63 RR Battalion. That he is the only earning male member in his family and, as such, due to his continued detention in the case FIR, his entire family, including his parents, sister and wife, have been badly suffering for want of survival. That he has taken a loan from the State Bank of India, Branch Office, Kottarakara, Kollam, Kerala, and due to non-payment of loan installments, the concerned Bank has already threatened to take over his residential house in order to have the settlement of the loan account.

That he earlier filed a bail application, during the investigation of the case, before the learned territorial Court of Additional Sessions Judge, Samba, (hereinafter referred to as "Trial Court" for short) which came to be rejected by the learned Court on the main ground that the investigation in the case FIR was still incomplete. That upon the completion of the investigation in the case FIR, the respondent submitted the final report/challan before the Court of learned Chief Judicial Magistrate, Samba, which committed the same for trial to the Court of learned

Principal Sessions Judge, Samba. That he filed a second bail application before the learned Principal Sessions Judge, Samba on 16.12.2025, in which the prosecution also filed its objections. That, however, the learned Court also rejected his application without touching the merits of the case vide order dated 23.01.2026. That the learned Court of Principal Sessions Judge Samba also de-committed the final report/challan for compliance with the provisions of Section 521 of BNSS. That a careful perusal of the complaint/FIR resulting in the registration of case FIR No. 0145/2025 dated 23.09.2025 with the respondent-Police Station, the statements of the prosecutrix and other witnesses recorded during investigation in terms of the provisions of Section 183 BNSS and the other investigation conducted in the case collectively reveals that no offence, as alleged by the complainant, appears to be made out against him. That there is no evidence with the prosecution agency to connect him with the commission of the alleged offences and the complaint of the complainant is concocted, having the effect of his false implication in the case.

That he is presumed to be innocent till proved guilty at the trial and, as such, his continued detention in the case for the last about one year tantamounts to his pre-trial conviction. That there is no question of his misusing the concession of bail sought in his favour and that he shall abide by any conditions that may be imposed by this Court in the event of his enlargement. That he has no criminal antecedents and is a brave, dedicated and disciplined soldier of the Indian Army. That he shall remain punctual at the trial and shall not make any attempt to threaten or intimidate or win over the prosecution witnesses.

2. The respondent-Police Station, through the learned Deputy Advocate General, has strongly resisted the bail application on the grounds, *inter alia,* that the same is not maintainable, as the petitioner is involved in a heinous and anti-social offence punishable under Sections 126(2)/64/351(2) BNS arising out of FIR No. 0145/2025 of Police Station Bari Brahmana, Samba, Jammu. That the petitioner-accused, who being an army personnel, was supposed to exercise utmost discipline, on 23.09.2025, attacked the complainant/prosecutrix when she was returning home from the university, wrongfully confined her, intimidated her and subjected her to the offence of rape, as defined under Section 63 BNS. That during investigation of the case, the commission of the offences charged against the petitioner-accused came to be fully established. That the statements of the complainant and other material witnesses came to be recorded during investigation in terms of Section 183 of BNSS, which substantiated the involvement of the petitioner/accused. That the Hon'ble Apex Court, time and again, has stressed upon the consideration of a variety of circumstances for consideration by the Courts of bail petitions, especially relating to heinous, anti-social or anti-national offences, including (i) heinousness and gravity of the crime; (ii) the circumstances under which the crime was committed; (iii) the status of the accused and the condition of the complainant; (iv) likelihood of the accused misusing the concession of bail by tempering with the prosecution evidence and absconding at the trial; (v) impact of the crime on the society and the State, etc., etc.

That the petitioner/accused was identified by the complainant/victim during a test identification conducted in the presence of a Magistrate, which fully substantiates his involvement in the case FIR.

That the offence under Section 64 BNS, in the facts and circumstances of the case, having regard to the commission of the said offence by an army personnel, is punishable with rigorous imprisonment for life. That having regard to the punishment prescribed under Section 64 BNS, the bail application attracts the bar as provided under the provisions of Section 480(1)(i) of BNSS.

3. I have heard the learned counsel for the parties, who almost reiterated their stands respectively taken in the application and memo of objections. It is needful to mention that although the alleged prosecutrix, without disclosing her name, was impleaded as a respondent in the instant bail petition for her objections in the matter, yet she did not opt to appear. She was offered opportunity though her presence or the presence of her authorized person was not obligatory in view of the provisions of Section 483(2), having regard to the commission of the offence under Section 64 BNS alleged against the petitioner/accused.

4. I have perused the application in hand, the objections filed in rebuttal by the respondent and the scanned copy of the Trial Court record, especially the statements of the prosecutrix and her father recorded during the investigation of the case before the Magistrate in terms of the provisions of Section 183 of the BNSS. The copies of the orders dated 18.11.2025 and 23.01.2026, respectively, passed by the learned Trial Court, and the Court of learned Principal Sessions Judge, Samba, have also been perused.

5. The case is presently pending trial in the Court of learned Additional Sessions Judge, Samba. The petitioner/accused stands charged for the commission of the offences punishable under Sections 126(2), 64 and

351(2) BNS. The petitioner-accused has pleaded not guilty to the charge framed against him and, as such, the case is at the stage of recording of the prosecution evidence. Till date, none of the prosecution witnesses stands examined at the trial.

6. Keeping in view the aforementioned perusal and consideration of the rival submissions advanced on both sides, this Court 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.

7. 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.

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

9. 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.

10. 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.

11. 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.

12. 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".

13. 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: -

> "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."

14. 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.

15. 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 out rightly 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 Maharastra 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.

16. This Court is conscious of the legal position the offence under section 64 BNS also charged against the petitioner carries a rigorous maximum 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. In these offences, even the sentence of life imprisonment is not absolute but as a maximum alternative.

17. In the opinion of the Court, the guiding factors/underlying principles that have been from time to time evolved by the Hon’ble Apex Court and various High Courts of our Country including this Court for consideration of a bail application jointly or severally do not justify the

denial of bail to the petitioner/accused in the backdrop of the facto legal scenario of the case.

18. This Court in its opinion is also fully fortified with the authoritative law laid down by the Hon'ble Apex Court cited as **"Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40"** also relied upon by the learned counsel for the petitioner, in which the bail was granted to the appellant who was also involved in economic offences. It is profitable to reproduce the relevant paras 24 and 25 of the judgment for ready reference: -

> "24. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating of the scales of justice."
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> "25. The provisions of Cr.P.C. confer discretionary jurisdiction on criminal courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual."

19. In **"Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280"**, the Hon'ble Apex Court has laid down the special factors for taking into consideration while exercising the bail jurisdiction and the relevant para 8 of the said judgment is reproduced as hereunder for ready reference: -

> "8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

20. The observations of the Hon'ble Apex Court laid down in **"State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21"** at para 18 of the judgment also deserve a needful mention:

> "18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State (Delhi Admn.]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is

material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

21. The Hon'ble Apex Court in Sanjay Chandra's case cited supra has inter alia held at para 40 of the judgment, "the grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon, whenever his presence is required."

22. A criminal court while considering a bail application in case of non-bailable offences attracting no immediate statutory bar and in respect of which the court is vested with the discretion shall consider the relevant factors/guiding principles having been passed by the authoritative courts from time to time and hereinbefore mentioned in a justice oriented and realistic way without being influenced by the gravity of allegations.

23. As hereinbefore mentioned, the Hon'ble Apex Court in its judgments cited as **"Siddharam Satlingappa Mhetre Vs. State of Maharastra decided on 02/12/2010, AIR 2011 SC 312 and Sushila Aggarwal and others vs. State (NCT of Delhi) and Another 2020 SC online 98"** decided on January 29, 2020 by a larger bench, has interpreted law even on the subject of anticipatory bail with a very wide outlook and while

interpreting the concept of liberty guaranteed under Article 21 of the Constitution of our country in a flexible and broader sense. It has been inter alia observed by the Hon'ble Apex Court in the aforesaid judgments that the exact role of the accused must be properly comprehended before arrest is made. "The inner urge for freedom is a natural phenomenon of every human being. Respect for life and property is not merely a norm or a policy of the state but an essential requirement of any civilized society. Just as the liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order."

**24. It is very needful to mention that the petitioner-accused came to be enlarged on interim bail on humanitarian grounds, owing to the death of his mother and with a view to enable him to participate in her last rites, vide orders dated 05.10.2026 and 23.10.2026. He is accordingly on interim bail, which is valid up to 7th November, 2026.**

25. In the backdrop of the aforementioned discussion, the petition is allowed and the petitioner/accused is admitted to absolute bail in the case FIR No. 0145/2025 of Police Station Bari Brahmana, Samba under Sections 126(2)/64/351(2) BNS subject to his furnishing of surety and personal bonds to the tune of Rs.1 lac each to the satisfaction of learned Trial Court by or on the next date of hearing at the trial of the main case. This order shall, however, be subject to the following conditions:

1) The petitioner/accused shall not directly or indirectly make any inducement, threat or promise to any prosecution witnesses so as to dissuade them from disclosing the real facts to the learned trial court.
2) The petitioner shall not repeat the commission of any crime.
3) The petitioner shall remain punctual at the trial of the case.
4) The petitioner shall not leave the limits of the India without prior permission of the learned trial court and shall deposit his passport, if any, issued in his favour with the learned Trial Court.

26. It is very needful to mention that nothing in this order shall be construed as any prejudging of or interference with the merits of the case.

**27. Disposed of.**

**(MOHD YOUSUF WANI)**
**JUDGE**

**SRINAGAR**
05.11.2026
*"Mubashir "*

*i. Whether the order is speaking: Yes*
*ii. Whether the order is reportable: Yes*