HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Crl A(D) No.22/2026

Reserved on: 29.09.2026
Pronounced on: 21.10.2026
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1. Raiz, Age 24 years
2. Younis, Age 21 years
   Both sons of Mohd. Latif
3. Meema, Age 60 years
   W/O Mohd. Latif
   All residents of village Suffian Bhaddu,
   Tehsil & District Kathua.
   Presently lodged in District Jail, Jammu,
   Through their son-in-law,
   Jabbar, Age 38 years,
   S/O Farid, R/O Ward No.6,
   near GPS Safyan Barnoti,
   Tehsil and District Kathua .....Appellant(s)

Through :- Mr. Irfan Khan, Advocate

v/s

Union Territory of J&K through
State Investigating Agency, Jammu. .....Respondent(s)

Through :- Ms. Priyanka Bhat, Assisting counsel to
Mrs. Monika Kohli, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE YASH PAUL BOURNEY, JUDGE

JUDGMENT

Per: Y. P. Bourney-J

01. This appeal, filed under Section 21 of the National Investigation Agency Act, 2008, is directed against the order dated 28.02.2026 passed by the learned 3rd Additional Sessions Judge, Jammu [Designated Court under Section 22 NIA Act), whereby the trial court declined to grant default bail to the appellants in case FIR No.61/2025 registered for offences punishable under Sections 13/16/18/23/38/39 of the Unlawful Activities (Prevention) Act, 1967 (UAPA), read with Sections

61(2)/103/109/147/149/249 BNS and 3/4/5 Explosive Substances Act & 7/27 Arms Act.

02. The precise question for determination is whether right to claim bail in default of presentation of charge-sheet within the time limit as prescribed under Section 43-D(2)(a) of the UAPA read with Section 187 of BNSS has accrued to the appellants/accused?

03. It is admitted case of the appellants that pursuant to the registration of FIR No. 61/2025 dated 28.03.2025 for offences punishable under Sections 13/16/18/23/38/39 of the Unlawful Activities (Prevention) Act, 1967 (UAPA), read with Sections 61(2)/103/109/147/149/249 BNS and 3/4/5 Explosive Substances Act & 7/27 Arms Act, appellants came to be arrested on 28.04.2025 and the charge-sheet has also been filed in due course on 25.10.2025. A claim was laid for default bail by the appellants before the trial court on the premise that investigation was not complete and as a matter of fact, an incomplete charge-sheet came to be presented before the Court just to deprive the appellants of their indefeasible right to defend its bail. Much stress has been laid on para 18.3 of the charge-sheet wherein the investigation with respect to certain aspects as detailed therein was still claimed to be going on and efforts to establish the links of appellants with the terrorists killed/absconding were still going on, claiming thereby that investigation was yet to establish any link between the slain/absconding terrorists and therefore, it was an incomplete charge sheet since a vital aspect was yet to be investigated. Reliance is placed upon the ruling of the Hon'ble Supreme Court in '**Ritu Chhabaria Vs. Union of India & Ors.'** reported as **2023 LiveLaw (SC) 352**.

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04. A perusal of the order impugned would show that all these points have been urged before the Trial Court, which ultimately came to dismiss the application vide order dated 28.02.2026 by holding that mere reference in para 18.3 that investigation was going on to establish the links of the arrested accused persons (appellants) with the slain/absconding terrorists as well as to find out their involvement in the past in terror related incident in Kathua does not mean that charge-sheet was incomplete since in para 18.4, it has been clearly mentioned that offences under Sections 13/19 UAPA stood established against the trio (appellants). In that view the charge-sheet cannot be said to be incomplete merely because some supplementary charge-sheet was anticipated in near future to highlight the links of the arrested accused with the terrorist agencies operating from across the border. An attempt was also made to make out a case for bail on merits, however, the trial court found no merit therein and has proceeded to dismiss the application.

05. Learned counsel for the appellants has laid much stress upon the ruling of the Hon'ble Supreme Court in **Ritu Chhabaria**'s case (supra). In that case, Hon'ble Apex Court has dealt elaborately with the fundamental right to life and liberty flowing directly from Article 21 of the Constitution of India and that any violation thereof, and the rights flowing therefrom, in case the investigation was not completed within the statutory period as provided under Section 167(2) Cr.P.C. or other special legislation. The Hon'ble Apex Court while referring to the precedents, the reports of the Law Commission came to hold in the ultimate analysis in para 32 that:

> "32. In view of the above mentioned discussions, the issues framed by us stand answered as under:-

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> I. Without completing the investigation of a case, a charge-sheet or prosecution complaint cannot be filed by an investigating agency only to deprive an arrested accused of his right to default bail under Section 167(2) of the CrPC.
>
> II. Such a charge-sheet, if filed by an investigating authority without first completing the investigation, would not extinguish the right to default bail under Section 167(2) CrPC.
>
> III. The trial court, in such cases, cannot continue to remand an arrested person beyond the maximum stipulated time without offering the arrested person default bail."

06. It was further held emphatically in para 34 of the said judgment that:-

> "34. Even at the cost of repetition, we find it pertinent to mention that the right of default bail under Section 167(2) of the CrPC is not merely a statutory right, but a fundamental right that flows from Article 21 of the Constitution of India. The reason for such importance being given to a seemingly insignificant procedural formality is to ensure that no accused person is subject to unfettered and arbitrary power of the state. The process of remand and custody, in their practical manifestations, create a huge disparity of power between the investigating authority and the accused. While there is no doubt in our minds that arrest and remand are extremely crucial for the smooth functioning of the investigation authority for the purpose of attaining justice, however, it is also extremely important to be cognizant of a power imbalance. Therefore, it becomes essential to place certain checks and balances upon the Investigation Agency in order to prevent the harassment of accused persons at their hands."

07. Shortly after the passing of the aforenoted judgment, the Hon'ble Supreme Court in **SLP(Crl) No. 5724/2023** titled **Directorate of Enforcement Vs. Manpreet Singh Talwar**, came to clarify on the submission of the learned Solicitor General that they were contemplating and were in the process of filing a review against the said judgment. It was made clear that trial court or, as the case may be, High Court are not precluded from considering an application for grant of default bail under Section 167(2) Cr.P.C. independent of and without relying upon the said judgment in **Ritu Chhabaria**'s case.

08. In light of the afore noted position of law and upon careful consideration of the charge-sheet, the material is support and the statements of the witnesses recorded under Sections 161, 164 CrPC as well as the order impugned, we find no reason to differ with the findings of trial court that the investigation was complete vis-à-vis involvement of the accused in the commission of offences as made out against the appellants in light of the materials on record including the oral accounts/electronic/forensic documents and the CDRS etc. collected by the investigating agency. Mere mentioning that investigating agency was still investigating and trying to establish the links between the appellants and the slain/absconding terrorists does not make out a case to project that investigation was incomplete as argued by the learned counsel for the appellants. Moreover, the appellants are not entitled to bail on merits also as has been clearly held by the trial court and we do not find any justification to differ with the trial court in light of the materials available on record against the accused persons.

09. For the reasons given hereinabove, this appeal fails and the file be consigned to records. Let a copy of this order be forwarded to the trial court for information and proceeding with the trial expeditiously.

(Yash Paul Bourney) (Sanjeev Kumar)
Judge Judge

JAMMU
21.10.2026
Narinder

Whether order is speaking? Yes/No
Whether order is reportable? Yes/No