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

(through virtual mode)

Bail App No. 305/2024

Pronounced on: 12.11.2026
Uploaded on: 12.11. 2026
Whether the operative part or full judgment is pronounced: ***Full***

Mohd. Tariq, Age: 36 years …Petitioner(s)/Appellant(s).
S/o Abdul Samad
Through his wife namely
Shanaz Akhter, Age: 31 years
W/o Mohd. Tariq,
R/o Village Loran, Tehsil Mandi,
District Poonch.

Through: Mr. Mumtaz Choudhary, Advocate

Vs.

1. **Union Territory of Jammu & Kashmir** ...Respondent(s).
   through its Commissioner/Secretary, Home Department, Civil Secretariat, Srinagar
2. **The Station House Officer**, Police Station, Loran, District Poonch.

Through: Mr. Eishaan Dadhichi, GA

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

JUDGEMENT

12.11.2026

1. Through the medium of the instant successive bail petition filed in terms of the provisions of Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code" for short), corresponding to the provisions of Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS" for short), bail on behalf of the petitioner/accused in the case bearing FIR No. 30/2020 dated 30.11.2020, registered at Police Station Loran, District Poonch, under Sections 302, 109, 201 IPC, has been sought on the grounds, inter alia, that he is a citizen of India and a resident of village Loran, Tehsil Mandi, District

Poonch, UT of J&K and thus entitled to seek enforcement of his constitutional and other statutory rights available to him. That he has been falsely and frivolously implicated in the case FIR in question, when he is innocent and has not committed the alleged offences. That he has been involved in the murder of one Sheraz Yousif S/o Mohd. Yousif, R/o Loran, District Poonch, without any tangible evidence. That the deceased was in the habit of taking narcotics who died on account of an overdose of narcotic substances, and the petitioner is in no way involved in the commission of the murder of the deceased, as alleged. That he, being a friend of the deceased, could not even have thought of killing him, and there was no enmity between them.

That the trial of the case is going on in the Court of learned Additional Sessions Judge, Poonch (hereinafter referred to as the "Trial Court" for short), and out of 35 listed witnesses, 29 witnesses have been examined at the trial. That the material witnesses have not in any way connected the petitioner/accused with the commission of the alleged offences. That only some of the official witnesses, including police personnel and FSL officials, remain to be examined, who are not witnesses to the occurrence. That there is no ocular evidence against the petitioner and the whole prosecution case rests on circumstantial evidence, which should be so strong and cogent as to connect the petitioner/accused with the alleged crime. That the trial of the case is likely to take much more time and, as such, the petitioner is entitled to seek the concession of bail on account of his long incarceration, coupled with no immediate prospect of conclusion of the trial at the earliest.

That three other co-accused in the case, namely, Ajaz Ahmed, Kosser Parveen and Waqar Ahmed, have already been granted bail by this Court, in the case FIR in question on 10.07.2024 and, as such, the petitioner/accused deserves his enlargement on the principle of parity. That the petitioner/accused earlier moved a bail application before the learned Trial Court, which was, however, rejected vide order dated 22.11.2024 passed by the learned Trial Court. That the witnesses so far examined at the trial have not incriminated the petitioner/accused. That since, in the light of the statements of the witnesses so far recorded at the trial, the involvement of the petitioner/accused has not been prima facie revealed, as such, the bar in terms of the provisions of Section 437 of the Code, corresponding to Section 480 of BNSS, is not attracted. That bail is a rule and its denial an exception, especially in cases where there are no apprehensions of misuse of the concession of bail by tampering with the prosecution evidence or by absconding during the trial. That the petitioner/accused has deep roots in the society and has respect for the rule of law and, as such, there is no question of his misusing the concession of bail, if granted in his favour. That continuous detention of the petitioner/accused tantamounts to his pre-trial conviction. That the long incarceration of the petitioner/accused, with no immediate prospect of conclusion of the trial, has violated his fundamental rights guaranteed to him under the Constitution.

2. The Respondent-State has resisted the bail application on the grounds that the petitioner/accused is involved in the commission of heinous offences punishable under Sections 302, 295 and 201 IPC and, as such, he does not deserve the concession of bail. That the offence punishable under Section 302 IPC carries the punishment of death and, as such, the

petitioner/accused, if admitted to bail, is likely to abscond during the trial under the threat of conviction. That the offence punishable under Section 302 attracts the bar in terms of the provisions of Section 437 of the Code, corresponding to Section 480 of BNSS. That the evidence collected during the investigation of the case and also recorded at the trial by the prosecution has connected the petitioner/accused with the commission of the offences charged against him. That the circumstantial evidence collected during the investigation of the case and brought on record at the trial fully connects the petitioner/accused with the commission of the crime. That on 22.10.2020, the deceased Sheraz Yousif S/o Mohd. Yousif Tantray, R/o Loran, Poonch, aged about 22/23 years, did not return home and his mobile phone got switched off, whereafter his father/complainant, Mohd. Yousif Tantray, approached Police Station Loran with such report, which led to the registration of a missing report at the concerned Police Station. That during the search for the deceased, he was found in a mosque at Danna Loran in an unconscious condition and was immediately brought to PHC Loran for medical examination, where he was declared brought dead by the doctor. That inquest proceedings under Section 174 of the Code came to be initiated by Police Station Loran vide DDR No. 21 dated 22.10.2020 to ascertain the cause of death of the deceased. That the dead body of the deceased was taken to District Hospital Poonch on 23.10.2020 for post-mortem examination. That after the post-mortem examination of the deceased, the viscera of the deceased was sent to FSL, Jammu, and GMC Jammu, for chemical analysis. That thereafter, the dead body of the deceased was handed over to his family members for performance of his last rites.

That during the course of enquiry proceedings and upon receipt of the FSL opinion as well as the pathology report, it surfaced that on the date of occurrence, the petitioner/accused, Mohd. Tariq, along with co-accused Ajaz Ahmed, called the deceased at Danna Loran. That when the deceased reached Danna Loran, all the accused persons, with criminal intention, took him to the house of co-accused Kouser Parveen and forcibly administered poison to him, whereafter he was locked in a bathroom in the house of co-accused Kouser Parveen. That when the deceased died in the bathroom, they shifted the dead body to the nearby mosque of the Mohalla. That thereafter, on the basis of the evidence, the inquest proceedings were closed with the registration of FIR No. 30/2020 under Sections 302, 109, 295 and 201 IPC, and formal investigation was started. That during the investigation of the case, the statements of some of the material witnesses were got recorded in terms of the provisions of Section 164 of the Code. That the final opinion was obtained under rules on the basis of the FSL/pathology report. That the commission of offences punishable under Sections 302, 295, 201 and 109 IPC was found established against the accused persons, including the petitioner, who were formally arrested in the case.

That all the accused persons, including the petitioner, already stand charged in the case for the commission of the offences under the challan, and upon their pleading not guilty to the charge, the prosecution was directed to lead evidence in the case. That the prosecution has examined as many as 29 witnesses out of the total list of 35 witnesses so far at the trial. That the petitioner/accused seems to be prima facie involved in the case in view of the evidence recorded at the trial by the prosecution. That the offences committed by the petitioner/accused are

highly heinous in nature and have also been committed under grave circumstances. That the petitioner/accused was indebted to the deceased for an amount of Rs. 50,000/- and the demand for recovery made by the deceased infuriated the petitioner/accused, who, in connivance with the co-accused, called the deceased to Danna Loran, whereupon he was taken to the house of Kousar Parveen and administered poison. That he, in an unconscious condition, was kept locked in the bathroom, whereafter, at sunset, he was shifted to the nearby mosque.

3. I have heard the learned counsel for the parties in respect of the matter.

4. The learned counsel for the petitioner/accused, while reiterating his stand already taken in the bail petition, submitted that the petitioner has been falsely and frivolously implicated in the case FIR, when he is innocent and has not committed the alleged offences. That the deceased was a drug addict and is likely to have consumed an excessive dose of drugs, leading to his death. That the petitioner/accused, being a friend of the deceased, could never ever have thought of committing the alleged act. That there is no concrete evidence against the petitioner/accused and the statements already given by the material listed prosecution witnesses have not inculpated him. That the case of the prosecution is based on circumstantial evidence, which is too weak to prima facie establish the involvement of the petitioner. That the death of the deceased took place on 22.10.2020, whereupon inquest proceedings came to be initiated to ascertain the cause of his death. That the FIR was registered after a period of more than one month from the date of his death in order to falsely and frivolously involve the petitioner in the case.

He further contended that the bar in terms of the provisions of Section 437 of the Code is not attracted in the case, as there appear to be no reasonable grounds for his involvement in the case in the light of the evidence adduced by the prosecution at the trial. He further contended that the personal liberty of the petitioner stands curtailed for a long period of more than five years and the trial against him has become oppressive. He contended that long incarceration is a well-established ground for release of the accused on bail. He further contended that the petitioner has deep roots in the society and, as such, there is no question of his misusing the concession of bail, if granted in his favour. That the petitioner shall abide by the conditions that may be imposed by this Court and shall face the trial punctually.

The learned counsel further contended that the co-accused have already been granted bail by this Court on similar allegations and, as such, the petitioner deserves bail on the principle of parity.

5. *Per contra*, learned counsel for the respondent-State, contended that the petitioner/accused does not deserve any concession of bail, as he has committed a brutal murder without any excuse. He submitted that the petitioner/accused was indebted to the deceased and, upon the latter's persistent demand for return of the money, he, i.e., the petitioner/accused, in league with the co-accused, called the deceased to take back the money. That when the deceased approached the petitioner/accused at the stated place, he was taken to the house of the co-accused Kousar Parveen, where he was murdered by administering poison, which fact has been confirmed upon the FSL/pathology reports as also the final opinion of the Medical Board relating to the cause of his death. The learned GA

submitted that the Jammu and Kashmir Forensic Laboratory, Jammu, vide its report dated 09.11.2020, addressed to the Medical Superintendent, District Hospital Poonch, reported that "**An Organoph**osphorus **Insecticide was detected in the Exhibit No's P-4559/2020 to P-456/2020"**. **He further contended that the Medical Board, on the basis of the FSL opinion, gave its final opinion to the effect that, in the opinion of the Board, the deceased person had died due to cardiorespiratory arrest as a result of organophosphorus poisoning**. The learned Government Counsel contended that the circumstantial evidence collected during the investigation of the case and also adduced at the trial fully connects the petitioner/accused with the commission of the crime. He contended that there is an express bar on the grant of bail in favour of the petitioner in terms of the provisions of Section 437 of the Code, corresponding to Section 480 of BNSS, as he is, inter alia, involved in the commission of the offence of murder punishable with death. He contended that the enlargement of the co-accused on bail is no ground for the grant of bail in favour of the petitioner/accused, being the main culprit in the case.

6. I have perused the instant successive bail petition, the objections filed in rebuttal and the scanned copy of the Trial Court record. The order dated 22.11.2024 of the learned Trial Court, rejecting the petitioner's earlier bail petition has also been perused.

7. I have also given my thoughtful consideration to the rival arguments advanced on both sides.

8. Keeping in view the aforementioned perusal and consideration, the Court is of the opinion that the petitioner/accused has not made out a case for grant of bail in his favour in the case in hand.

9. The petitioner, along with the co-accused, stands formally charged for the commission of offences punishable under Sections 302, 109, 295 and 201 IPC arising out of case FIR No. 30/2020 of Police Station Loran, Poonch. The petitioner is alleged to have committed the murder of the deceased, namely, Sheraz Yousuf S/o Mohd. Yousuf, aged about 22/23 years, with the aid and assistance of the co-accused. It is the case of the prosecution that the petitioner/accused, Mohd. Tariq, was indebted to the deceased to the extent of Rs. 50,000/- and that the deceased demanded the return of the money on account of his personal need, which infuriated the petitioner, who, on 22.10.2020, called the deceased for taking the money, who accordingly reached the spot, wherefrom the petitioner/accused and Ajaz Ahmed took him to the house of Kowsar Parveen, wherein his death was caused by administration of poison. The deceased upon his death is alleged to have been taken and kept in a nearby mosque during evening hours, to screen the evidence, which act has also caused the defiling of a place of worship. The inquest proceedings in terms of the provisions of Section 174 of the Code came to be initiated immediately to ascertain the cause of death of the deceased, which led to the registration of the formal case FIR No. 30/2020 under Sections 302, 109, 295 and 201 IPC against the petitioner and the co-accused. During the course of the investigation, the Investigating Officer got the statements of some of the material witnesses recorded before a Magistrate in terms of Section 164 of the Code. The FSL opinion regarding the viscera of the deceased, collected upon his post-mortem examination, came to be received by the concerned

doctors, **who, on the basis of the same, gave their final opinion as regards the cause of death, being cardiorespiratory arrest as a result of organophosphorus poisoning. The Court has** gone through **the evidence recorded at the trial and hesitates to refer to the same to avoid any prejudging of the case.**

10. Admittedly, there is no direct ocular evidence in the case, but the circumstantial evidence collected during the investigation and also adduced at the trial of the case appears to be of such a nature which, subject to the final outcome of the trial, does not rule out the existence of reasonable grounds for believing that the petitioner/accused is not guilty of the offence under Section 302, inter alia, charged against him.

11. The Court is not required to conduct a mini-trial while considering a bail petition. The relevance and appreciation of evidence is to take place at the conclusion of the trial for the purpose of pronouncement of judgment.

12. It is needless to mention that heinous and pre-planned offences are most often committed in secrecy. Under such circumstances, the Investigating Agency necessarily has to search for and collect circumstantial evidence to trace the actual offenders. However, circumstantial evidence has to be considered on the basis of its rules of appreciation. Circumstantial evidence cannot be brushed aside for want of ocular evidence in aid of the same. Admittedly, in a case of circumstantial evidence, the circumstances so collected must form such a chain of events as would permit no conclusion other than the one of the guilt of the accused.

13. The learned counsel for the respondent-State, during his arguments, inter alia, submitted that the character of the petitioner, the motive behind the occurrence, and the evidence collected during the investigation and

adduced at the trial support the prima facie involvement of the petitioner in the case.

14. As hereinbefore mentioned, the petitioner/accused stands formally charged for the commission of the offences punishable under Sections 302, 109, 295 and 201 IPC vide order dated 24.07.2021 passed by the learned Trial Court. The accused persons pleaded not guilty at the trial after the contents of the charge-sheet (charge form) were read over and explained to them, whereafter prosecution evidence was called.

As on the date of filing of the instant bail application and submission of the scanned copy of the record, by the learned Trial Court, as many as 29 witnesses out of a total of 35 witnesses had been examined. As on date, the prosecution evidence is reported to have already been closed with the examination of all the prosecution witnesses. The case is reported to be fixed for final arguments.

15. Admittedly, the co-accused in the case stand already admitted to bail by this Court vide order dated 10.07.2024. **The petitioner/accused stands, inter alia, charged for the commission of the offence punishable under Section 302 IPC as the main offender.** The offence under Section 302 IPC, in view of the punishment of death also prescribed thereunder, attracts the bar in terms of the provisions of Section 437 of the Code, corresponding to Section 480 of BNSS.

16. A criminal court while recording its satisfaction as to whether there appear "reasonable grounds" of involvement of an accused in the commission of an offense attracting the bar in terms of provisions of Section 437 of the Code (Section 480 BNSS), has to use its discretion in

a judicious manner so that no miscarriage of justice happens either by grant of bail or by denial of the same.

The "reasonable grounds" of involvement can be inferred from the facts and circumstances of the case especially, the nature of the evidence. The Court is supposed to consider the broader probabilities to reach its supposition regarding the existence of reasonable grounds of involvement of the accused.

Admittedly, the words "reasonable grounds" cannot be read to mean proved as used in '*Bharatiya Sakshya Adhiniyam'*, as such an interpretation would set at naught the power vested in a court to grant bail pending trial.

The expression "reasonable grounds" would obviously mean something more than mere suspicion and conjectures and something less than proof. It would necessarily mean such grounds or material that would prima facie enable a person of ordinary prudence to believe that the accused is or is not guilty.

It is no doubt true that the object of the legislation of such disabling provisions in respect of heinous offences carrying sentence of death or imprisonment for life in alternative is to prevent the offenders from immediately granting bail in heinous offences. In this view of the matter, the court is required to examine the material placed before it and then to arrive at a conclusion that there exist "reasonable grounds" to believe that accused is guilty or not guilty

The "reasonable grounds" would vary from case to case and from one accused to another. What may be reasonable in one case may not be so in another and therefore the words "reasonable grounds" cannot, on account of a discretion vested in the court, be put into a straight-jacket.

Each case would have to be dealt with and examined on its own facts and decided keeping in view the mandate of law. The consideration at the time of taking up of the bail application for disposal is different from the consideration adopted at the end of the trial for holding an accused guilty or not guilty. In considering an application for bail, court is not required to conduct a preliminary trial. The Courts while deciding bail applications will be traversing beyond their ambit and would be exceeding their limit of functions if they engage themselves in discovering the guilt or innocence of the accused which can only be determined at the trial stage. The courts should not go at a tangent in order to find out the possible excuses for grant bail. Whether there are "reasonable grounds" or not is the question which must be decided judicially, that is to say there should be some tangible evidence on which the Court might come to the conclusion that if unrebutted, the accused might be convicted. Whether there are reasonable grounds for believing that a person is guilty of such an offence depends on what evidence is offered by the prosecution to the charge against him.

In order to come to the conclusion, that a person is guilty, the Court must consider the evidence which if unrebutted may lead to conclusion that the charge against him stands proved and cannot unjustifiably hold that there are "reasonable grounds" for believing that he is guilty. It is a settled position of law that the real question whether there are reasonable grounds for believing that a person is guilty of offences attracting bar under Section 437 of Code (Section 480 BNSS), depends upon what evidence is offered by the prosecution to prove the charge against him. While reaching such conclusion, the Court must consider the nature and character of evidence against him.

17. 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.

18. 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.

19. The petitioner/accused is likely to misuse the concession of bail, if granted in his favour under the threat of his possible conviction.

20. 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."

21. 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, behavior, 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."*

22. The presumption of innocence of an accused pending trial is not disturbed, even if he is denied bail, on justified grounds. The learned Trial Court has also rejected the earlier bail petition of the petitioner on the basis of its opinion that there appear reasonable grounds of his involvement in the case.

23. In the backdrop of the aforementioned discussion, the grant of bail in favour of the petitioner/accused at this stage is likely to cause a miscarriage of justice. As hereinbefore mentioned, the trial case is listed for final arguments and, as such, the final outcome of the trial is likely to

come out soon. It is, however, very needful to mention that nothing in this order shall be construed as any prejudging of the merits of the case, as this order is passed for the limited purpose of consideration of the bail petition.

24. However, the learned Trial Court is requested to conclude the trial of the case at an earliest, with the passing of the final judgment.

25. Before parting, it is needful to mention that in the case in hand, all the accused persons stand charged for the commission of the offences punishable under Sections 302, 109, 295 and 201 IPC. The alleged main accused also stands charged for the offence of abetment. The order regarding the framing of charge has to be in accordance with the provisions of Chapter XVIII of BNSS (corresponding to Chapter XVII of the Code). No doubt, there are enabling provisions in Chapter XVIII of BNSS (corresponding to Chapter XVII of the Code) to the effect that no errors in framing or stating the charge shall be regarded at any stage of the case as material unless the accused was, in fact, misled by such error or omission and unless the error has occasioned a failure of justice. A Criminal Court is also within its powers to modify the charge at any time before judgment is pronounced. The learned Trial Court is required to look into this aspect while concluding the trial in the case.

26. The bail application is accordingly disposed of.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR
12.11.2026
"Mubashir "

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