



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

Bail App. No. 14/2025
Cr1M No. 1857/2025

Reserved on: 03.02.2026
Pronounced on : 06.02.2026
Uploaded on : 06.02.2026
Whether the operative part or full
judgment is pronounced: Full

Shareen Gani

....Petitioners

Through:- Mr. Akeel Ahmed Wani, Advocate.

V/s

UT of J&K & anr

.....Respondents

Through:- Mr. Bhanu Jasrotia, GA for R-1.
Mr. P.N. Raina, Sr. Advocate with
Mr. J.A Hamal, Advocate and
Mr. Intikhab Hussain Shah, Advocate
for R-2

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

01. The petitioner has invoked jurisdiction of this Court under Section 483 of BNSS seeking her enlargement on bail in a case arising out of FIR No. 525/2013 for offences under sections 302/364/363/120-B RPC registered with Police Station, Rajouri, which is stated to be pending before the court of learned Additional Sessions Judge, Rajouri.

02. As per allegations made in the chargesheet, co-accused Intiaz Ahmed, who happens to be the husband of



the petitioner, is alleged to have kidnapped a minor male child aged about nine years when the said child was on his way back from school to his home at around 2 pm to 2.30 pm. It is alleged that the co-accused Imtiaz Ahmed had hatched a criminal conspiracy with his wife, the petitioner herein, for abducting the child, namely, Saliq Mansoor from near Kheora Danishabad Colony Link Raod and after abducting him, he was taken to a rented room at Bela Colony where he was wrongfully confined with the purpose of obtaining ransom from father of the child. However, when the police came into action, the petitioner and her husband panicked and they strangulated the child and committed his murder. The dead body of the child was stuffed by the petitioner and co-accused in a big plastic bag, which was thrown in the rented room and both the accused fled away from the spot.

03. After conducting investigation of the case, the chargesheet was filed against the petitioner and co-accused before the competent court and during the investigation of the case, the petitioners came to be arrested on 12.10.2013. The chargesheet was produced before the competent court on 06.12.2013 wherein it was alleged that offences under sections 302, 364, 363, 120-B RPC stand established against the petitioner and co-accused.

04. Vide order dated 14.06.2014, the learned trial court framed charges for offences under sections 302, 364, 363, 120-B RPC against the accused including the petitioner herein.



Upon denial of charges by the accused, the prosecution was directed to lead evidence in support of its case. As many as 81 witnesses have been cited in the challan out of which 70 witnesses are stated to have been examined by the prosecution so far.

05. It seems that during the pendency of the challan, co-accused Imtiaz Ahmed has been enlarged on bail by virtue of order dated 10.07.2024 passed by this Court in Bail Application No. 147/2022 titled "**Imtiaz Ahmed Vs. UT of J&K and anr**". It also appears that the petitioner had approached this Court for grant of bail in the year 2017 by virtue of bail application No. 65/2017 but the said application came to be dismissed by this Court on 18.04.2018. After the grant of bail to the co-accused, the petitioner again moved the learned trial court and filed a bail application before the said court but the same has been dismissed by the learned trial court in terms of order dated 18.12.2024. It is in these circumstances that the petitioner has again approached this Court for grant of bail in her favour.

06. The petitioner has primarily sought bail on the ground that she has been in custody during trial of the case for the last more than twelve years but the trial has not been concluded as yet. It has been contended that there is no likelihood of completion of trial in the near future as such, the petitioner deserves to be enlarged on bail. It has further been contended that the co-accused, who according to the petitioner



is the principal accused in the case, has already been granted bail by this Court, as such on the ground of parity also, she is entitled to grant of bail.

07. The petition has been contested by respondent-State as well as by the complainant. In the reply to the bail application, the respondent-State has, after narrating the allegations made in the chargesheet, submitted that the trial of this case is still in progress and that the petitioner does not deserve concession of bail.

08. The complainant in his objections to the bail application has submitted that the delay in conclusion of the trial is attributable to the petitioner and co-accused as in the year 2015 they had filed a transfer petition before this Court which came to be dismissed on 26.04.2016 and during the pendency of said transfer petition, the trial of the case was stayed. It has also been contended that the co-accused had moved an application for declaring him as juvenile before the trial court on 17.03.2017 which came to be dismissed on 29.01.2022. As a result of this trial of the case got delayed. It has been further submitted that a revision petition against order dated 29.01.2022 passed by the trial court is still pending before this Court. The complainant has further contended that this Court while dismissing the previous bail application of the petitioner had observed that she is not entitled to be released on bail during trial of the case,



therefore, unless the trial of the case is completed, the petitioner cannot be given the concession of bail.

09. During the course of arguments, learned Senior counsel appearing for the complainant further brought to the notice of this court that out of remaining eleven prosecution witnesses to be examined, six are already dead and only five witnesses remain to be examined. He has further contended that instead of granting bail to the petitioner, the trial court can be asked to expedite the trial of the case and conclude examination of remaining prosecution witnesses at the earliest.

10. I have heard learned counsel for the parties and perused record of the case including record of the trial court.

11. A perusal of the record shows that the petitioner was arrested on 12.10.2013. It is an admitted case of the parties that since the arrest of the petitioner, she has remained in custody. Thus, she has completed about 12 and a half years in custody. A perusal of the trial court record reveals that the petitioner has not been released from custody even for a day. It also appears that when the earlier bail application of the petitioner was dismissed by this Court on 18.04.2018, the trial of the case was still at its inception and most of the prosecution witnesses were yet to be examined. After the dismissal of the earlier application of the petitioner by this Court, the trial of the case has progressed substantially and till date about seventy prosecution witnesses have been



examined by the learned trial court. However, the fact of the matter remains that trial has not been concluded and even if the contention of the prosecution that only five prosecution witnesses are yet to be examined is admitted to be correct still then it cannot be stated that prosecution evidence has been concluded.

12. In the light of the aforesaid facts, the question that falls for determination is as to whether a person who has been accused of having committed a heinous offences like murder is entitled to be enlarged on bail on the ground of her long incarceration of more than twelve years. This Court while considering the aforesaid issue in the case of **Manzoor Ahmad Mir vs. UT of J&K**(Bail App No.109/2022 decided on 30.12.2022), after taking note of the statement of law laid down by the Supreme Court in the cases of **Hussainara Khatoon vs. Home Secretary, State of Bihar**, (1980) 1 SCC 81, **Supreme Court Legal Aid Committee vs. Union of India**, (1994) SCC 731, **Umarmia vs. State of Gujarat**, (2017) 2 SCC 731, **Union of India vs. K. A. Najeeb**, (2021) 3 SCC 713, **Ashim alias Asim Kumar Haranth Bhattacharya vs. National Investigation Agency**, (2022) 1 SCC 695, and **Jagjeet Singh & Ors. Vs. Ashish Mishra @ Monu & anr.** **2021** Live Law (SC) 376, has observed as under:

“From the foregoing enunciation of the law laid down by the Supreme Court, it becomes clear that long incarceration of an undertail without any likelihood of conclusion of trial in near future infringes upon the right of speedy trial of



such undertrial. While the Supreme Court has, in some cases, gone to the extent of quashing the trial itself but consistent view of the Supreme Court has been that in case the delay in conclusion of the trial amounts to oppression or harassment, the Court can interfere in such situations and grant bail to an accused in a heinous crime like murder also. While doing so, the Court has to take into consideration several factors like, length of delay, the justification for the delay, the accused's assertion of his right to speedy trial, and prejudice caused to the accused by such delay. It is also clear that the Criminal Courts are not obliged to terminate the trial or criminal proceedings only on account of lapse of time and acquit the accused but in appropriate cases, the Court can grant appropriate relief or suitable directions in favour of the accused. Thus, in deciding bail applications, one of the important factors which should be taken into account is the delay in concluding the trial. If an accused is denied bail but is ultimately acquitted, nobody is going to compensate him for the period he has spent in custody. Therefore, long incarceration of an accused may not be by itself a ground for grant of bail but it certainly becomes a ground for grant of bail to an accused, if the delay in conclusion of trial is attributable to the prosecution.”

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13. Thus, it is clear from the foregoing analysis of the legal position that the delay in conclusion of trial is one of the important factors which has to be considered while deciding the plea of bail of an accused even if the said accused is facing trial in a heinous offence like murder.

13. In the light of the aforesaid legal position, let us now analyze the facts of the present case. A perusal of the trial court record would show that out of 81 prosecution witnesses cited in the challan, only 70 prosecution witnesses



have been examined so far. Eleven prosecution witnesses are yet to be examined. According to the complainant, out of these prosecution witnesses, six have died and only five more prosecution witnesses are required to be examined. With reference to the contention of the respondents that the petitioner is responsible for delay in conclusion of trial, the record does show that for about a year or so, the trial remained stayed because of the pendency of the transfer application filed by the co-accused before this Court. The minutes of proceedings of the trial court show that during these three years on most of the occasions the case was adjourned on account of non-production of prosecution witnesses by the State.

14. It also appears from the perusal of the record that co-accused had made an application before the trial court for declaring him as a juvenile. The said application was made in the month of March, 2017 and by that time, more than three years had already elapsed from the date of framing of the charges. The record tends to show that despite filing of application by co-accused seeking his declaration as a juvenile, the trial before the court below did not come to a halt. In fact, during the pendency of the aforesaid application filed by the co-accused, a good number of prosecution witnesses were examined before the trial court. So it is not a case where on account of pendency of application filed by the co-accused, any delay was caused in the progress of the trial. The minutes



of proceedings bear testimony to the fact that despite repeated directions by the trial court to produce prosecution witnesses and despite fixing calenders for the said purpose, the trial of the case progressed at a snail's pace.

15. When we take a holistic view of the matter, in the light of the proceedings recorded by the trial court, it appears that delay in conclusion of the trial is solely attributable to the prosecution and there is no contribution in this regard on the part of the petitioner. It appears that the prosecuting agency has been unable to procure attendance of witnesses despite repeated directions by the trial court. Thus, there is no hesitation in holding that delay in prosecution of trial in the present case has occurred only due to lackadaisical approach of the prosecuting agency. In such circumstances, the right of speedy trial of the petitioner stands infringed.

16. Learned trial court while dismissing the bail application of the petitioner has not at all adverted to the contention regarding long incarceration of the petitioner and its effect on her right to speedy trial. The Court below has been swayed by the heinousness of the offence alleged to have committed by the petitioner without even adverting to the effect of delay in conclusion of the trial. Another factor on the basis of which learned trial court has declined the concession of bail to the petitioner is that at the time of declining the concession of bail to the petitioner in the previous application, this Court had directed that she is not entitled to bail during



trial of the case. It is true that such an observation was made by this Court while dismissing application of the petitioner on 18.04.2018 but at that time, the trial of the case was at his inception and the petitioner had not completed even five years behind the bars at the relevant time. The Court had not visualized that even after another seven years the trial of the case would not conclude. The situation has changed now inasmuch as even after the lapse of more than seven years of passing of order dated 18.04.2018, there appears to be no prospect of conclusion of trial at least in near future. The said observations, as such, would not come in the way of considering the application of the petitioner for grant of bail on the grounds of long incarceration and infringement of her right to speedy trial.

17. Apart from the above, the co-accused who is alleged to be the principal offender has already been granted bail by this court in terms of order dated 10.07.2024. Thus, on the ground of parity also, the petitioner deserves the concession of bail. Besides this, the petitioner happens to be the mother of a small child who, in fact, due to incarceration of her mother was forced to stay with her in the jail. By now the child must have reached the age of discretion and, as such, if the child continues to remain with her mother inside the jail, the same may be prejudicial to the growth of his personality. On this ground also, the petitioner deserves the concession of bail at this stage.



18. For what has been discussed hereinbefore, this Court finds that the petitioner has carved out a case for grant of bail. Accordingly, the petition is allowed and the petitioner is directed to be released on bail subject to the following conditions:

- (I) *That she shall furnish personal bond to the satisfaction of the In-charge of the concerned Jail, along with two local sureties in the amount of Rs.50,000/- (rupees fifty thousand) each to the satisfaction of the trial court;*
- (II) *That, in case she has a passport, she shall surrender the same before the trial court and she shall not travel out of the Union Territory of Jammu and Kashmir without permission of the trial court;*
- (III) *That she shall not tamper with the prosecution evidence and she shall not indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial;*
- (IV) *That she shall appear before the trial Court on each and every date of hearing;*

19. The application stands disposed of in the above terms.

**(SANJAY DHAR)
JUDGE**

**JAMMU
06.02.2026
Naresh/Secy.**

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**