

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

Case: **Bail App No. 40/2025**

Reserved on: 30.05.2025

Pronounced on: 05.06.2025

Yashpaul Sharma

....Applicant/Petitioner

Through :- Mr. P. N. Raina, Sr. Advocate with
Mr. J. A. Hamal, Advocate

V/s

UT of J&K

....Respondent(s)

Through: Mr. Bhannu Jasrotia, GA

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Applicant, an undertrial in the Court of learned Principal Sessions Judge, Rajouri [“the trial Court”] in a case arising from FIR No. 63/2023 as File No. 62/Murder Ch. titled ‘UT v. Yash Paul’, being aggrieved of order dated 05.02.2025 passed by learned trial Court, vide which, his application for regular bail came to be declined, has invoked Section 485 of Bharatiya Nagarik Suraksha Sanhita, 2023 [“BNSS”], primarily on the ground that 10 out of 20 witnesses, so far examined by the prosecution in the trial Court, do not even remotely suggest his involvement in any crime, much less the commission of offence he has been charged with.

2. It is predominant contention of the applicant that merely because he has been charged for the alleged commission of offence under Section 302 IPC coupled with offence under Section 30 Arms Act, neither in law nor on facts, he can be denied his consideration to admission on bail

because the liberty of an individual is a paramount consideration guaranteed under the Constitution. According to the applicant, statements of the prosecution witnesses as have been recorded during the trial are incapable of becoming an evidence by any reasonable or reckoning whether by reference to facts or by position of law against him.

3. The plea, *per contra*, has been opposed on the other side by UT predominantly on the ground of gravity of the charge, severity of the punishment and pendency of the trial. Mr. Bhannu Jasrotia, learned GA has relied upon a verdict of Hon'ble Supreme Court in **Satish Jaggi v. State of Chattisgarh and ors.** [Appeal (Crl.) No. 651/2007 dated 30.04.2007] and a pronouncement of this Court in **Taja Begum and ors. v. UT of J&K** [CRM(M) No. 411/2021 c/w Bail App. No. 147/2021 dated 27.06.2022].

4. As factual narration of the present case would unfurl, Police Station Sunderbani on 14.09.2023 received a source information that one Yash Paul Sharma, [the applicant], had some heated arguments with his wife Neelam Devi and during arguments, he fired upon his wife with his 303 VDC riffle due to which she had received grievous injuries. She was shifted to SDH, Sunderbani for treatment whereafter she was referred to GMC, Jammu. On this information FIR No. 63/2023 under Sections 323/307 IPC and 30 IA Act came to be registered. During investigation, the Investigating Officer seized the weapon of offence i.e. 303 VDC riffle along with 02 live cartridges 7.62 MM, 01 empty cartridge and one fired bullet. The injured, during investigation, succumbed to the injuries, as such, offence under Section 302 IPC came to be incorporated and

offences under Sections 323/307 were deleted. Pertinently, the Investigating Officer also got statements of material eye witnesses recorded under Sections 161 and 164 Cr.P.C.

5. It surfaced during investigation that applicant accused, Yash Paul being Sarpanch of Village Patrara and a Member of Village Defence Committee (VDC) was issued a 303 rifle along with 50 live cartridges. He had one son and one daughter. His son worked as a private employee at KRS Clinic, Sunderbani and apart from this employment, his son used to provide DJ services in marriage functions. The applicant did not like that his son played DJ. He, being annoyed, kept picking fights and forced his son to close the DJ business. This is also stated to be as one of the reasons for the applicant to remain angry with his deceased wife and he blamed her for giving free hands to her son. It came to light during investigation that on 14.09.2023, son of the applicant had gone to play DJ in a marriage function and at about 11/12 p.m., when he returned home, the applicant picked fight, due to which, his son left home without eating. On this, the applicant fought with his wife. He got angry and left home. In the mid night, it is alleged that applicant came home inebriated and when he enquired about his son, he was told by the deceased that he had just arrived from the marriage function. On this, the applicant got annoyed with his wife and told her that it was because of her that their son was playing DJ, which was not a respectful job. He picked fight with her, took out the VDC riffle, shot at his wife with an intention to kill due to which she received grievous injuries. The Police report goes on to reveal that on hearing the sound of gunshot, son, Sahil Sharma and daughter Sanjana Kumari of the applicant and deceased and few

neighbourers arrived at the scene of occurrence and evacuated the injured to SDH, Sunderbani for treatment. After initial treatment, she was referred to GMC Jammu for further treatment where she succumbed to her injuries. On 14.09.2023, the applicant came to be arrested.

6. The investigation culminated in the presentation of charge sheet against the applicant in the trial Court, where he came to be charged whereby he pleaded innocence and claimed trial, prompting the trial court to ask for prosecution evidence. Prosecution so far has examined 13 out of 20 witnesses, including children of the applicant and the deceased, Sanjana and Sahil, eye witnesses and witnesses to the recovery and seizure of the weapon of offence.

7. The applicant, after the examination of material witnesses of the prosecution, preferred an application for concession of bail *inter alia* on the grounds that both the eye witnesses, namely, Sanjana Kumari and Sahil, who happen to be daughter and son of the accused and the deceased had not only denied the occurrence but also stated that relation between their parents was cordial and there was no occasion for the accused to take away the life of his wife. It was also urged that witnesses to the seizure memo had also denied the seizure to have been prepared in their presence and that rest of the witnesses were either police officials or formal in nature. It was contended before the trial Court that it was apparent from the evidence available on the case file that there was no material evidence in support of charge and that applicant accused, being more than 60 years of age with no criminal antecedents, was entitled to bail.

8. The bail plea of the applicant was opposed by the prosecution on the ground of gravity and seriousness of charge.

9. Bail or jail belongs to the blurred area of criminal justice system which largely hinges on the hunch of the Bench, otherwise called the judicial discretion. Personal liberty of a citizen is too precious a value of our constitutional system recognized under Article 21 of Constitution. Court should take cognizance of the fact that liberty of an individual whose involvement has not been established in the commission of an offence, should not be lightly dealt with, for deprivation of liberty has immense impact on his mind. Incarceration creates a concavity in the personality of an individual.

10. Pertinent factors among other circumstances, in the light of various judgments of Hon'ble supreme Court and High Courts across the country are whether there is a *prima facie* or reasonable ground to believe that the accused has committed the offence; nature and gravity of accusation; severity of the punishment in the event of conviction; danger of the accused absconding or fleeing, if released on bail; character, behaviour, means, position and standing of the accused; likelihood of the offence being repeated; reasonable apprehension of the witnesses being influenced and danger of course, of justice being thwarted by grant of bail.

11. Learned trial Court is of the opinion that prosecution evidence can be analyzed for limited purpose to find out broad probabilities of the prosecution case and though eye witnesses, who happen to be children of the deceased and the accused, had stated that they had not actually seen their father shooting their mother dead, however, the broad probabilities

indicate involvement of the accused in the commission of the offence. Therefore, learned trial Court though admitted the applicant on interim bail for a limited duration to attend marriage ceremony of his daughter, but rejected the plea for regular bail. It is submission of the applicant that the approach of learned trial Judge to his bail plea whereunder he simply refused to appreciate the evidence recorded during the trial, is contrary to the settled position of law that liberty of an accused could be deprived only, if there is evidence in support of charge.

12. The compendium of the grounds urged for release of the petitioner on bail is that there is no clinching and credible evidence available on the record connecting him with the commission of alleged crime.

13. It is trite that while a detailed examination of the evidence recorded during trial is to be avoided while considering the question of bail, to ensure that there is no prejudging in the matter, a brief examination, however, to be satisfied about the existence or otherwise of a *prima facie* case is necessary. In cases involving capital punishment or lifer, bail can only be granted if Court have reasons to believe that accused has not committed offence. However, an examination of the material in the present case, verily points out the absence of material in believing that the applicant is involved in the commission of offence for which he stands charged. There is no reasonable ground to believe that applicant was involved in any offence he has been charged with as the existence of reasonable grounds depends upon the evidence, which has been led and existence and otherwise of reasonable grounds would always relate to its existence in the evidence and not otherwise.

14. In the present case, the prosecution has so far examined 13 out of 20 witnesses including eye witnesses and material witnesses to the recovery and seizure of the weapon of offence. Both the children of the applicant and deceased, cited as eye witnesses by the prosecution, during their testimonies before the trial court have clearly stated that relations between their parents were quite cordial and they have reflected their ignorance about the occurrence. PW Sanjana, daughter of the petitioner and deceased has stated that she was asleep and was not aware as to how gunshot came to be fired. Son, PW Sahil Sharma, though claimed in his statement recorded during investigation that it was the applicant accused who killed his mother, however, he like his sister has not supported the prosecution version during the trial. In fact, there are two lists of witnesses in the charge sheet and in one of the lists, PW Tarsem Kumar has also been cited as eye witnesses and he also turned hostile during the trial. PW Hansraj is witness to the seizure of the weapon of offence. He has also stated that relations between applicant and his deceased wife were cordial and pertinently, he has stated that no riffle or bullet was seized in his presence. The witness goes on to submit that investigating Officer obtained his signatures 4/5 days after occurrence in the Police Station. Interestingly, PW2 Surat Prakash Sgct, who happens to be a police official and is witness to the seizure, has stated that memo was scribed by the IO and he signed only. Another police witness SPO Puran Singh is not aware about the contents of the seizure memo and states that it was IO who wrote the seizure memo EXTP-11 and he merely signed it. It is evident from the aforesaid that there is not even a single line in the testimonies of the prosecution witnesses so far examined in the trial

court to connect the applicant with the commission of any crime. It did not require any detailed examination of the prosecution evidence and a cursory glance at the prosecution evidence would show that there is no evidence worthy of credence to implicate the applicant in the commission of crime he has been charged with. In such cases of “No Evidence” the Courts are obliged to take a holistic view of the matter and exercise the discretion of bail.

15. For the foregoing reasons, the present application is allowed and accused is admitted on bail, subject, however, to the following condition that:

- i. he shall furnish a surety bond in the amount of Rs. 1.00 lac to the satisfaction of learned trial Court and a bond of personal recognizance of the like amount to the satisfaction of Superintendent of concerned jail;
- ii. he shall regularly appear before the trial court; and
- iii. he shall not directly or indirectly make any attempt to coerce or influence the prosecution witnesses or tamper with the prosecution evidence.

16. Any attempt on the part of the applicant accused shall entail in the forfeiture of bail bonds and he shall be taken into custody immediately.

17. Disposed of.

(RAJESH SEKHRI)
JUDGE

Jammu:
05.06.2025
Paramjeet

Whether the order is speaking?
Whether the order is reportable?

Yes
Yes