



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

Reserved on: 05.05.2026

Pronounced on: 08.05.2026

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*Whether the operative part or
full judgment is pronounced:*

Full

Bail App No.240/2025

**BASHARAT AHMAD ABBASI ALIAS BASHIR AND
ANOTHER**

...PETITIONER(S)/APPELLANT

Through: - Mr. Syed Aabid Parvez, Advocate

Vs.

UT OF J&K AND OTHERS

...RESPONDENT(S)

Through: - Mr. Jahingeer Dar, GA.

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

JUDGMENT

1) The petitioners, who are facing trial for offences under Section 302 and 120-B IPC before the Court of learned Additional Sessions Judge, Baramulla (for short "the trial court"), have moved the instant application for grant of bail.

2) In the application, it is contended that the petitioners are in custody for last more than five years in connection with FIR No.02/2020 of Police Station, Bijhama, Uri, despite being innocent. It has been submitted that the entire prosecution case is based on circumstantial evidence and



death of the victim was a result of suicide and not homicide. It has been submitted that the petitioners had filed an application before the learned trial court for grant of bail which came to be dismissed vide order dated 01.08.2025 despite the fact that all the material witnesses have already been examined. It has been submitted that pre-trial incarceration of the petitioners violates their right guaranteed under Article 21 of the Constitution.

3) On merits, it has been submitted that forensic evidence completely demolishes case of the prosecution, inasmuch as the recovery that was effected from the kitchen of the accused was relating to Zinc Phosphide whereas the poison detected in the viscera of the deceased was found to be Organo Phosphorus Insecticide. It has been contended that out of 33 listed witnesses, 22 prosecution witnesses have already been examined and none of these witnesses has attributed any specific act or role to the petitioners and there is no evidence on record with regard to the conspiracy.

4) The respondents have contested the bail application by filing their reply. In the reply it has been submitted that the petitioners are involved in a heinous crime of murder, as such, they cannot be enlarged on bail unless it is shown that they are not guilty of the said offence. It has been contended



that there are reasonable grounds for believing that the petitioners, if enlarged on bail, would jump the concession of bail and will tamper with the prosecution witnesses. It has also been contended that there is sufficient material on record of the trial court to connect the petitioners with the crime.

5) I have heard learned counsel for the petitioner and learned Government Advocate for the respondents. I have also gone through record of the trial court.

6) As per prosecution case, on 24.01.2020, Police Station, Bijhama, received information from reliable sources that at Bela Reshiwari adjacent to a bridge on right side of the road, an unknown person was found in unconscious condition. The said person was taken to hospital at Uri by some passersby but the doctors declared him brought dead. On receiving this information, the police started inquest proceedings during which the dead body was taken into custody. The deceased was identified as Mohammad Syed Abasi. The postmortem of the dead body was conducted whereafter it was handed over to the family members for its burial. The mobile cellphone of the deceased was seized and the statements of the witnesses under Section 175 of Cr. P. C were recorded.



7) Upon completion of inquest proceedings, it was revealed that cause of death of the deceased was poisoning, therefore, FIR No.02/2020 for offences under Section 302 and 120-B of IPC was registered with Police Station, Bijhama, and investigation of the case was set into motion. During the course of investigation, statements of the witnesses were recorded and the suspects were also questioned.

8) After investigation of the case, it was revealed that for the last five years, the deceased was having a love affair with one lady, namely, Zahida Bano, who happens to be the sister of accused Shahida Begum and both were interested to marry but the family members of the lady were not happy with this relation. Accused Shahida Begum and another accused, namely, Hilal Ahmad Malik, who happens to be the brother of Zahida Bano, along with the petitioners herein, hatched a conspiracy under which they brought the deceased to the house of accused Shahida Begum and Hilal Ahmad Malik. The accused had already procured rodent killer poison, which they mixed with Lipton tea and offered the same to the deceased after giving assurance to him that his marriage will be contracted with Zahida Bano. The deceased was seen off whereafter he was found lying near a bridge near Reshiwari.



9) On the basis of disclosure statement and identification of accused Shahida Begum and Hilal Ahmad Malik, the remaining portion of the rodent killer poison was recovered from their kitchen and the same was sent to FSL, Srinagar, for examination. Accused Shahida Begum and Hilal Ahmad were arrested.

10) During the course of investigation, it was found the deceased had, on the day of the occurrence, before this death at 7.00 p.m. called PW Altaf Hussain from his mobile No.80899022700 to mobile No.9596844013 and had asked him to record the call which he did. PW Altaf Hussain produced his mobile phone before the police which was seized. During the conversation, besides petitioners herein, the deceased had also named accused Asia Begum as accused persons responsible for his death. Accordingly, the petitioners were also arrested.

11) It was found during the course of investigation that the petitioners had chalked out the plan on phone with other accused on 24.01.2020. Petitioner Basharat Ahmad gave assurance to the deceased that his marriage with Zahida Bano would be solemnized. He brought the deceased in his vehicle bearing registration No.JK02AR-4510 upto Reshiwari bridge and asked him not to disclose anything to any person and further asked him to go to Jabadar to the



residence of accused Shahida Begum and Hilal Ahmad Wani. The deceased went there and he was offered tea mixed with rodent killer poison, whereafter he was seen off.

12) The investigating agency, after investigation of the case, came to the conclusion that the petitioners and co-accused have committed the offences punishable under Sections 302 and 120-B of IPC for having participated in the conspiracy to kill the deceased poisoning. Accordingly, the challan was laid before the learned trial court on 22.04.2020. Vide order dated 06.07.2021, the learned trial court framed charges for offences under Section 302 and 120-B of IPC against the petitioners and co-accused.

13) It seems that vide order dated 28.04.2023, the female accused, namely, Shahida Begum and Asis Begum, were enlarged on bail where as bail application of the petitioners was rejected. It also appears that the petitioners moved another bail application before the trial court on 18.09.2024, which came to be dismissed by the said court in terms of order dated 01.08.2025. Thereafter the petitioners have filed the present application on 20.11.2025.

14) Before discussing the grounds urged by the petitioner for grant of bail in his favour in the light of the facts narrated hereinbefore, it is necessary to notice the legal position relating to grant of bail in heinous offences like murder.



15) The consistent view of the Supreme Court as well as of this Court, is that the matters to be considered in a bail application for grant of bail are as follows:

1. *Whether there is a, prima facie, reasonable ground to believe that the accused had committed the offence;*
2. *Nature and gravity of the charge;*
3. *Severity of punishment in the event of conviction;*
4. *Danger of accused absconding or fleeing, if released on bail;*
5. *Character, behavior, means, position and standing of the accused;*
6. *Likelihood of the offence being repeated;*
7. *Reasonable apprehension of the witnesses being tampered with;*
8. *Danger of course of justice being thwarted by grant of bail;*

16) So far as the instant case is concerned, the petitioner is facing the charge of murder which is punishable with death sentence or imprisonment for life. The Supreme Court in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another, (2004) 7 SCC 528**, while laying down the guidelines for grant or refusal of bail in serious offences like murder, has observed as under:

“11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted



particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the Court in support of the charge; (See Ram Govind Upadhyay Vs. Sudarshan Singh and others and Puran Vs. Rambilas and another.

12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted. (See Ram Govind Upadhyay, supra)

17) In the aforesaid judgment, the Supreme Court has also observed that the conditions laid down in Section 437(1)(i) of Cr. P. C are sine qua non for granting bail even under Section 439 of the Code, meaning thereby that in a case where a person is alleged to be involved in an offence punishable with death sentence or imprisonment for life, he cannot be released on bail if there appear reasonable grounds for believing that he has been guilty of such an offence. So, the petitioner in the instant case, in order to succeed in making

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out a case for grant of bail in his favour on merits, has to satisfy this Court that on the basis of the evidence led by the prosecution and the evidence that is proposed to be led by the prosecution, there is absence of reasonable grounds for believing that he has committed the offence.

18) Learned counsel for the petitioner has taken this Court through the statements of prosecution witnesses recorded before the trial court. He has particularly referred to the statements of PW 20 Altaf Hussain and PW 21 Mohammad Rafiq as also the statement of the doctor and the report of FSL. According to the learned counsel, these are the star witnesses of the prosecution and there are contradictions on vital aspects of the case in the statements of these witnesses. On this ground it is being urged that this Court can safely conclude that there are no reasonable grounds for believing that the petitioners are involved in the commission of alleged crime.

19) Before dealing with the argument of learned counsel for the petitioner, we need to be clear as regards scope of this Court in appreciating and examining the evidence led by the prosecution at this stage of the proceedings.

20) The Supreme Court in the case of **State of UP through CBI v. Amaramani Tripathi, (2005) 8 SCC 21**, while dealing with this aspect of the case has observed that a



detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no pre-judging and no prejudice. The Court further observed that a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary. Keeping these principles in view, the contention of learned counsel for the petitioner on merits of this application is required to be tested.

21) The statements of prosecution witnesses, which have been referred to by learned counsel for the petitioner, particularly the statements of PW-20 Altaf Hussain and PW-21 Mohammad Rafiq, reveal that they have, *prima facie*, supported the prosecution version. Both these witnesses have stated that the deceased immediately before his death contacted PW Altaf Hussain on his cellphone and asked him to record the conversation. During the conversation, the deceased clearly told him that he has been tricked by the petitioners whereafter he was poisoned. PW-21 Mohammad Rafiq has confirmed the same in his statement. The investigating agency has collected the call data record and has also seized the cellphone of PW Altaf Hussain, in which the conversation was recorded. The said cellphone has been sent to CFSL and as per the report submitted by CFSL, there is no editing in the conversation.



22) The statement made by the deceased immediately before his death which relates to the circumstances pertaining to his death becomes admissible in evidence and, therefore, the contention of learned counsel for the petitioners that there is no material on record of the trial court that would connect the petitioners with the alleged crime, is misconceived. There may be minor contradictions here and there in the statements of PWs Altaf Hussain and Mohammad Rafiq but at the stage of considering the bail application, it is not open to this Court to critically analyze their statements.

23) Coming to the medical evidence on record, it is clearly opined in the postmortem report that death of the deceased has resulted due to poisoning. The issue as to whether the poison detected in the viscera of the deceased was the same kind of poison which was recovered by the police from the kitchen of the two accused, may not be of much relevance at this stage for the purposes of considering the prayer of the petitioners for grant of bail. Thus, on merits, it cannot be stated that there are reasonable grounds for believing that the petitioners are not involved in the alleged crime.

24) That takes us to the next ground urged by learned counsel for the petitioners which relates to long incarceration of the petitioners and non-completion of the



prosecution evidence. In this context, it is to be noted that the challan was filed before the trial court at a time when Covid Pandemic was at its peak. The minutes of the proceedings of the learned trial court would reveal that physical functioning of the courts was not taking place and in the absence of robust and reliable means of internet connectivity, the proceedings were being conducted through WhatsApp video calls. In these circumstances, the physical production and even virtual production of the accused before the trial court was seriously hampered for a pretty long time, as a result whereof, the formal charges against the accused could be framed only on 06.07.2021, which is more than one year after the presentation of challan. The record further shows that the situation continued to be so even after framing of charges during the trial of the case. Thus, for about two years from the date of filing of the challan, there was hardly any progress in the trial of the case.

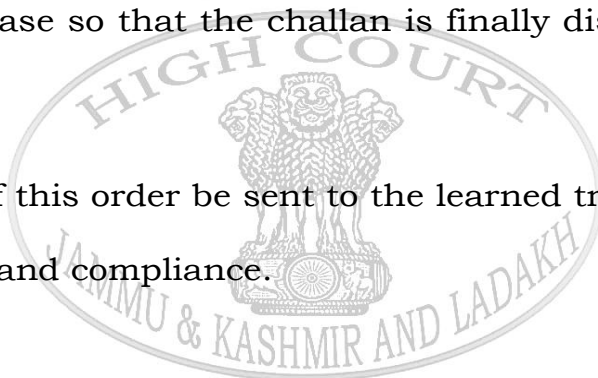
25) The minutes of the proceedings of the trial court would reveal that after the Covid Pandemic was over, the trial has progressed at a reasonable pace and most of the prosecution witnesses stand already examined by the trial court. The record shows that only a few formal witnesses are to be examined by the trial court and the material witnesses stand already examined. In the face of this material on record, it



cannot be stated that there has been any delay in progress of the trial which can be attributed either to the court below or to the prosecution. Therefore, in the facts and circumstances of the case, it cannot be stated that the right of speedy trial of the petitioners stands violated in the instant case. On this ground also, the petitioners do not deserve the concession of bail.

26) For what has been discussed hereinbefore, I do not find any merit in this petition. The same is dismissed accordingly. However, the learned trial court is directed to expedite the trial of the case so that the challan is finally disposed of at the earliest.

27) Copy of this order be sent to the learned trial court for information and compliance.



(Sanjay Dhar)
Judge

SRINAGAR

08.05.2026

“Bhat Altaf-Secy”

Whether the **judgment** is reportable: **YES/NO**