

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

(through virtual mode from Jammu)

Reserved on: 21.05.2025

Pronounced on: 29.12.2025

Uploaded on : 29.12.2025

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

Bail App No. 145/2024

- 1. Saleema W/o Bilal Ahmad Awan, age 29 years**
 - 2. Reshma W/o Reyaz Ahmad, age 40 years**
 - 3. Rubina W/o Mushtaq Ahmad Awan, 35 years**
- Residents of Cheri Panzgam Tehsil Kokernag, District Anantnag.**

...Petitioner/Appellant(s)

Through: Mr. S. A. Hashmi, Advocate

Vs.

UT of J&K through SHO P/S Larnoo
FIR No. 21/2023 P/S Larnoo, Kokernag, District Anantnag.
u/s 302 IPC etc.

...Respondent(s)

Through: Mr. Illyas Laway, GA

CORAM: HON'BLE MR JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

1. Heard.
2. Police Station Larnoo, district Anantnag came to register **FIR No. 0021** dated **19.07.2023** for alleged commission of offences under sections 451/341/506/323/427/147/148/307/34 of the Indian Penal Code,

1860 which got registered upon a written complaint of one Ghulam Mohi-ud-Din Dar naming fourteen (14) persons as accused therein.

3. In said written complaint and resultantly in said FIR No. 0021 of 2023, fourteen (14) persons, who came to be named as accused having indulged in mentioned alleged commission of offences, are as under:

1. Bilal Ahmad Awaan.
2. Ashraf Awaan.
3. Gulzar Ahmad Awaan.
4. Shabir Ahmad Awaan.
5. Muzaffar Ahmad Awaan Sons of Ali Bahadur Awaan.
6. Aslam Dar Son of Mohd. Yousuf Dar.
7. Mukhtaar Awaan Son of Mohd Yousuf
8. Mst. Begum Jan widow of Ali Bahadur.
9. Mst. Rubeena w/o Mushtaq.
10. Mst. Reshma w/o Rayez Ahmad.
11. Mst. Saleema w/o Bilal.
12. Zahid s/o Mohd Yousuf Dar.
13. Rashid Darkad s/o Jeela Darkad.
14. Asif Darkad s/o Jeela.

4. The narrative forthcoming from said FIR is that the complainant- Ghulam Mohi-ud-Din resident of Cheri Panzgam Larnoo, reported himself in the Police Station Larnoo and submitted a written complaint. Said

complaint, which is bearing an overwritten date **19.07.2023**, is stating therein that complainant- Ghulam Mohi-ud-Din's father Ali Mohd Dar is having his pasturage (behak) where he keeps his cattle/livestock. Adjacent to the pasturage (behak) of Ali Mohd. Dar is said to be the pasturage (behak) of all accused persons named above.

5. On **19.07.2023**, Ali Mohd. Dar, for the purposes of making a cattle guard/shelter for cattle/livestock, commenced putting up a cow-shelter and cattle guard when Bilal Ahmad Awan and his brothers intervened and stopped the intended shed making and fencing work of his pasture (behak) by Ali Mohd Dar which left the accused persons nursing bad intention and feelings against the complainant's father Ali Mohd Dar.

6. The complainant's father Ali Mohd Dar is said to have come back to his residential house in evening of said day and while he was sitting in the company of his family members when at about 10.00 p.m., the above named accused persons, equipped with sticks bearing criminal intention, are said to have entered the verandah of house of Ali Mohd Dar and started indulging in abusing and hitting window panes of Ali Mohd Dar's house thereby causing damage to the house.

7. In this scenario, Ali Mohd. Dar is said to have come out of his house in order to resist the assaulters and

their assault which left the assaulters infuriated. The accused persons being the alleged assaulters with an intent to kill Ali Mohd. Dar pounced upon him and dealt blows of stick on head of Ali Mohd. Dar which immediately resulted in blood oozing out of Ali Mohd. Dar's nose and ears leaving him unconscious and fallen on the ground. In the meantime family members Bilal Ahmad Dar, Mukhtar Ahmad Dar & Reyaz Ahmad Dar came rushing out who were also pounced upon by the accused persons subjecting them to suffer blows of sticks and leaving them also injured.

8. FIR No. 0021 of 2023 under sections 148/147/34/427/506/ 451/341/307 Indian Penal Code was, thus, registered

9. Later on, upon death of the complainant – Ghulam Mohi-ud-Din Dar's injured father Ali Mohd. Dar on **31.07.2023**, commission of offence under section 302 of Indian Penal Code also came to be incorporated by reference to **FIR No. 0021/2023**.

10. Upon investigation of the case by reference to said FIR, the Police Station Larnoo, through its Investigating Officer, came to present **Final Police Report (Charge Sheet) No. 28 of 2023** dated **15.09.2023** for commission of offences under sections 506/323/427/336/447/149/

148/147/ 307/302 Indian Penal Code thereby booking the following accused persons:-

1. Bilal Ahmad Awaan.
2. Mohd. Ashraf Awaan.
3. Shabir Ahmad Awaaan.
4. Muzaffar Ahmad Awaan Sons of Ali Bahadur Awaan.
5. Mukhtaar Ahmad Awaan.
6. Aslam Dar.
7. Zahid Ahmad Dar.
8. Abdul Rashid Gujjar.
9. Mohd. Asif Gujjar.

11. Thus, one of the accused persons originally named in the written complaint and also in FIR at serial No. 3, namely, **Gulzar Ahmad Awaan** S/o Ali Bahadur Awaan was left out from the array of the accused persons and in his place **accused-Mushtaq Ahmad Awaan** was introduced and implicated thus keeping the total number of accused persons to be fourteen (14).

12. Nine (9) accused persons were already in a state of arrest/custody at the time of presentation of Final Police Report (Challan) whereas below named five (5) co-accused persons were named in the Police Challan to be the ones not in a state of arrest and police report (challan) produced in their absence:-

1. Mushtaq Ahmad Awaan.
2. Mst. Begum Jan w/o Mohd. Yousuf Dar.
3. Mst. Saleema Bano, w/o Bilal Ahmad Awaan.
4. Mst. Reshma w/o Rayez Ahmad Dar.
5. Mst. Rubeena w/o Mushtaq Ahmad Awaan.

13. However, later on out of said five (5) accused, three (3) accused persons namely, Mst. Saleema Bano, Mst. Reshma both got arrested on **30.05.2024** whereas Mst. Rubeena came to be arrested on **19.01.2024** so as to continue to be in custody ever since as an undertrial.

14. All the accused persons are undergoing trial while in a state of custody except accused-**Mushtaq Ahmad Awaan** and **Mst. Begum Jan** who have been proceeded under section 229 of the Code of Criminal Procedure, 1973 on account of being absconders.

15. Three petitioners herein are all women, who are in the array of 14 accused persons, and are also in state of judicial custody as undertrials.

16. Three petitioners solicited bail by individual bail applications on file Nos. 477/BA, 476/BA & 960/BA before the trial court of learned **Principal Sessions Judge, Anantnag** which came to accord rejection by virtue of an order dated **06.11.2024**.

17. The refusal of bail in favour of said three petitioners was justified by the court of learned Principal Sessions Judge, Anantnag by reference that the stage at which the bail was being solicited is not enabling one for the court to consider letting said three petitioners on bail.

18. The court of learned Principal Sessions Judge, Anantnag kept aside the consideration otherwise encoded in the Proviso to section 437(1) of the Code of Criminal Procedure, 1973 which provides scope for bail in favour of a person being under the age of 16 years/women/sick or infirm person.

19. The investigation stage conduct of said three petitioners weighed heavily with the trial court of learned Principal Sessions Judge, Anantnag to hold them disentitled to ask for discretion of bail.

20. So much so, the court of learned Principal Sessions Judge, Anantnag came up with a judgment oriented passing observation that the evidence recorded so far does not absolve said three petitioners of their culpability in the commission of the alleged offences.

21. All three bail applications came to be accorded disposal by a common order but bearing separate date of order in the manner that bail application on file No. **477/BA** is given the date of order as **07.11.2024**, bail

application on file No. **476/BA** given the date of order as **29.10.2024** and the same is bail application on file No. **960/BA** given the date of order as **29.10.2024**, leaving this court bit confused as to manner in which common order but with three different dates of decision came to be passed by the learned Principal Sessions Judge, Anantnag.

22. Be that as it may, frustrated by refusal of grant of bail in their favour by the trial court of learned Principal Sessions Judge, Anantnag, all three petitioners approached this Court with the institution of the present petition filed on **27.11.2024** invoking jurisdiction of this court in terms of section 437/439 of the Code of Criminal Procedure, 1973 seeking bail.

23. At the time of institution of the present petition, four prosecution witnesses, all of them being the alleged eye-witnesses including the complainant, are said to have been examined in the case.

24. During the pendency of the present petition, more prosecution witnesses came to be examined and all of them being the alleged eye/material witnesses.

25. Thus, at the time when this Court came to hear the bail plea of the petitioners, the state of trial had undergone progress ahead of the stage when the court of

learned Principal Sessions Judge, Anantnag had chosen to deny the bail to three petitioners.

26. The petitioners have come forward with the plea that they have been implicated in a case which by no stretch of facts and circumstances can justify their implication by the very tone and tenor of the written complaint made by the complainant - Ghulam Mohi-ud-Din Dar, the FIR registered thereupon and even the narrative set up in the Final Police Report.

27. It is being pleaded that in the written complaint although fourteen accused persons came to be named as intruders/assaulters but no specific role was attributed to each and every accused except a very sweeping and generalized allegation and accusation that Ali Mohd. Dar was subjected to suffer blows of sticks on his person which are said to have constituted cause of his death on **31.07.2023** after a gap of thirteen days.

28. In addition, it is further pleaded that of the three petitioners, the petitioner No. 1 is having breast feeding baby and all the petitioners have three, five, seven & eight years' old minor children whereas the husband of the petitioner No. 1 is also in judicial custody as an undertrial in the case. During the course of judicial custody of the petitioner No. 1, her eight year old son – Rehan is said to have met an accident of drowning thereby losing his life

and she as well as her husband was not able to attend even the burial of their lost son.

29. When this Court examines the Prosecution case in larger perspective by duly bearing in mind the constraint of avoiding any observation on merit and demerits of the Prosecution case, this Court is left convinced that it is a case where the court of learned Principal Sessions Judge, Anantnag ought to have exercised discretion by respecting the scope as encoded in the Proviso to section 437(1) of the Code of Criminal Procedure, 1973 rather than being dismissive of the intendment of the Proviso to section 437(1) of the Code of Criminal Procedure, 1973.

30. The framers of the Code of Criminal Procedure, 1973 in providing the Proviso in sub-section 1 of section 437 reckoned 'Woman' as a class in terms of being accused of commission of non-bailable offence being entitled to a consideration in the matter of grant of bail without being held hostage by the rigour of sub-section 1 of section 437 of the Code of Criminal Procedure, 1973.

31. There is no doubt that said Proviso does not mandate upon a criminal court approached for the sake of bail in a non-bailable offence in favour of a woman for bail to be granted on mere asking but, nevertheless, when applied for bail involving case of a woman, be it as an undertrial in custody or an accused in custody during

investigation prior to the trial, instantly activates the spirit of Proviso for a criminal court to keep in due consideration that while for a similar set of facts and circumstances a male person accused of commission of non-bailable offence undergoing trial in custody or in custody during investigation stage be not entitled to earn the bail except on a case made out on merits warranting grant of bail but in the case of a woman accused there is a scope left for the criminal court not to be weighed down by the consideration that for same set of facts and circumstances a man accused of commission of bailable offence and being in undertrial custody would suffer denial of bail.

32. When this Court surveys the facts and circumstances of the present case of the prosecution in which the accusation of commission of offence under section 302 Indian Penal Code in particular is being related to weapon of offence being sticks wielded by the assaulters whose role in the written complaint and FIR did not come out to be stated individually particularly in the context of extent of the women accused's actual involvement this Court considers that a case is made out for grant of bail in favour of the petitioners lasting the pendency of the criminal trial ongoing before the court of learned Principal Sessions Judge, Anantnag.

33. Accordingly, present petition is **allowed** by grant of bail in favour of the petitioners subject to furnishing of bond, personal as well as surety, for an amount of Rs.50,000/- each, to be furnished to the Superintendent, District Jail concerned as well as to the court of learned Principal Sessions Judge, Anantnag subject to the condition that the petitioners shall not leave the UT of Jammu & Kashmir without prior permission of the trial court of learned Principal Sessions Judge, Anantnag and also shall not indulge in any act of omission or commission which may prejudice the ongoing examination of prosecution witnesses in the case except at the cost of suffering cancellation of bail hereby granted.

34. **Disposed of.**

(RAHUL BHARTI)
JUDGE

SRINAGAR

29.12.2025

Muneesh

*Whether the judgment is speaking : **Yes***