

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(Through Virtual Mode)**

CRM(M) 410/2025 CrIM 814/2025

Pronounced on 23/03/2026.
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**1. Ajaz Ahmed
S/o. Abdul Rashid
R/o. Village Sailan Tehsil Surankote,
District Poonch.**

...Petitioner(s)/Appellant(s).

Through: Mr. Vikram Sharma, Sr. Advocate with
Mr. Sachin Dev Singh, Advocate.

Vs.

**1. UT of J&K through SHO Police
Station Poonch**

2. Superintendent, District Jail, Poonch

...Respondent(s).

Through: Ms. Monika Kohli, Sr. AAG

CORAM:

**HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE
JUDGMENT**

1. Impugned in the instant petition having been filed under the provisions of Section 528 of Bharatiya Nagarika Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS for short), is the order dated 05.04.2025 passed by the Court of Learned Special Judge Designated under National Investigation Agency Act (Additional Sessions Judge), Poonch (hereinafter referred to as the 'Trial Court' for short), on Bail Petition No. 207/Bail while rejecting the prayer of the petitioner for his enlargement on bail in case FIR No. 358/2023 of Police Station Surankote District Poonch under sections 120-B, 121, 122, 201, 201 IPC, 7/25 Arms Act, 13, 17, 18, 18-B, 20, 21, 23, 38, 39 and 40 of Unlawful Activities Prevention Act (ULAP Act).

2. The brief facts of the case relevant for disposal of the instant petition are that Case FIR No. 358 of 2023 came to be registered with Police Station, Surankote pursuant to receipt of a written report/docket dated 14.11.2023

issued by Shri. Itifaq Ahmed, ASI No. ExJ007148 (PW 46) then posted with SOG Surankote Camp Buffliaz J&K, through the hands of Shri. Zameer Ahmed, Head Constable No. 573/P, also posted with the said police component as on date, which revealed that an information through reliable sources was received on that day by police component Surankote regarding movement and activities of terrorists, whereupon the originator accompanied with Deputy Superintendent of Police affiliated to the component as also other police personnel left for the Naka Checking in the government vehicles and started performing their duty at Buffliaz Chowk; that in the process of performance of their duty, they, at about 7 PM in the evening, stopped for checking one vehicle-Fortuner bearing No. DL8CZ 2565 of white color which was coming from DKG side on its way towards Kashmir via Mughal Road; that three persons, that is, one driver and two other persons, one sitting on the left side of the driver at the front and the other on the middle seat, were found boarded in the vehicle who respectively disclosed their names as Aijaz Ahmed (Petitioner), Gulshan Ahmed, son of Mohammad Sharif Sheikh, resident of Bonikhet, Tehsil Surankote, and Farooq Feroz, son of Mohammad Rafiq Dar, resident of Rajdhani, Thanamandi, District Rajouri; that upon their search, arms and ammunition of the description (i) one pistol, two magazines, and 9mm live cartridges (22 numbers) and one mobile phone (ii) one pistol, two magazines, 9mm live cartridges (22 numbers), and cash of Rs 2.5 lakh and two mobile phones and (iii) a mobile phone came to be recovered from the apprehended persons respectively; that besides four posters of banned outfit Hizbul Mujahideen also came to be recovered from the sun-shade of the vehicle; that upon the failure of the apprehended persons to justify the possession of the prohibited arms and ammunition, it was believed that all the three persons, on the instructions of the intelligence agency (ISI) of Pakistan and terrorist organization Hizbul Mujahideen, are indulging in illegal activities with a view to create disturbances by killings and massacre of general public in the Jammu and Kashmir with a view to threaten the unity and integrity of India; that subsequent to the registration of the FIR and during investigation, the petitioner Aijaz Ahmad Sheikh, Gulshan Ahmad, Mehraj Ahmad and Abid Ramzan S/O. Mohammad Ramzan Sheikh R/O. Chotipora Shopian were found to be

involved in the case FIR when, as against the accused Farooq Feroz, S/O. Mohammad Rafiq R/O. Rajdhani Thanamandi, District Rajouri, no incriminating evidence could be established who was accordingly given the benefit of Section 169 of the Code of Criminal Procedure, 1973 (now repealed and hereinafter referred to as the 'Code' for short); that the accused Abid Ramzan Sheikh was not found despite extensive search and in relation to him it was learnt during investigation that he has illegally crossed to the Line of Control and gone to the area of POK. That the present petitioner Aijaz Ahmad after the presentation of the final report/challan in the case FIR before the competent Trial Court expressed his willingness to give a true account of the facts and circumstances of the case, provided he is being tendered pardon as per the provisions of Section 306 of the Code. He was accordingly, during the trial of the case, brought before the concerned Chief Judicial Magistrate on 24.08.2024 for tender of pardon and getting his statement recorded in terms of the provisions of Section 306 of the Code corresponding to Section 343 of the Bharatiya Nagarika Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS' for short).

3. The learned Chief Judicial Magistrate accordingly on 24.08.2024 tendered pardon to the petitioner and proceeded to record his statement as an approver. Subsequently, the statement of the petitioner gets also recorded at the trial as an approver/accomplice on 8.3.2025 at the instance of the prosecution. The petitioner subsequently applies to the learned trial court for grant of bail in his favor which is rejected through the order impugned in this petition.

4. The petitioner has assailed the impugned order on the grounds, inter alia, that he is a domicile of UT of Jammu and Kashmir and a citizen of India thus entitled to seek the enforcement of his constitutional and other legal rights. That he came to be implicated in the case FIR number 358/2023 of Police Station Surankote, Poonch along with two other accused namely Gulshan Ahmed and Farooq Feroz when he is totally innocent. That he is a Government Teacher who was lastly posted at government primary school Handal Sailan Zone Buffliaz, Poonch and therefore commanded respect in the society. That his fault is only that he, in good faith, stood as a guarantor to the co-accused Gulshan Ahmed in respect of loans secured by him from the Jammu and

Kashmir bank as also from the SFC Rajouri. That co-accused Gulshan Ahmed defaulted in paying back the loan which led to the deduction of monthly instalments from his salary account. That on the fateful day of occurrence that is 14.11.2023, he was told on phone by the accused Gulshan Ahmed to accompany him so that he will collect money for being deposited in the bank account to stop the deduction of instalments from his salary account. That he did not share any criminal conspiracy as alleged with the co-accused Gulshan Ahmed or any other accused and left with the accused Gulshan Ahmed only with the hope that he will collect money from somewhere so that the same amount is being credited to the loan account to facilitate the stopping of deductions from his (petitioner's) salary account. That whatever happened on the day of occurrence, he was not knowing anything about the same and got trapped despite being totally innocent. That even during investigation of the case he revealed to the Investigating Officer the true account on his part justifying his innocence but to his bad luck he was not believed. That even the co-accused Gulshan Ahmed during investigation of the case disclosed his innocence. That after the presentation of the challan in the case, he thought it proper as an innocent person to apply for pardon and in terms of the provisions of section 306 of the Code and accordingly moved an application to the learned trial court on 03.06.2024.

That the said application was directed by the learned Trial Court to be routed through IO/prosecution, which was done and he was accordingly tendered pardon by the Court of learned Chief Judicial Magistrate vide his order dated 24.08.2024 and his statement as an approver also came to be recorded by the said Magistrate with his certificate thereon to the effect that the petitioner was found to have fully known the consequences of becoming an approver upon tender of pardon to him in terms of provisions of Section 306 of the Code.

That thereafter the prosecution filed an application on 05.02.2025 before the learned Trial Court seeking his physical appearance for getting his statement recorded at the trial as a prosecution witness in his capacity as the approver. That he was accordingly examined at the trial on 08.03.2025 by subjecting him to examination-in-chief as well as cross-examination. That he

gave a true and full account of the statement relative to the incident/offense to the satisfaction of the prosecution. That he did not contradict his earlier statement recorded before the learned Chief Judicial Magistrate. That after fulfilling his obligation as an approver, he moved an application for his release on bail on 26.11.2024 before the learned Trial Court which was dismissed through the order impugned. That the learned Trial Court dismissed his bail application on the sole ground that as per the provisions of Section 306 (4) (b), a person accepting the tender of pardon under Sub-section 1 “shall, unless he is already on bail”, be detained in custody until the termination of the trial which is evident from the paras 6, 7 and 9 of the impugned order.

That the impugned order suffers from patent illegality and incorrectness as the provisions of Section 306(4)(b) of the Code do not place a blanket ban or operate as an absolute embargo on the power of the Trial Court to grant bail to an approver having been tendered pardon, but instead justify the grant of bail to such person under exceptional circumstances, especially when he has complied with the terms and conditions of the pardon by making a true and full account of the facts and circumstances in relation to the incident/crime committed by him and the co-accused to his knowledge. That it is well-settled that rider contained under the aforesaid provisions of law is not intended to punish the approver for having come forward to give evidence in support of the prosecution, but to protect him from the possible indignation and rage from the co-accused. That it is no longer res integra that the provisions of Section 306(4)(b) of the Code cannot be read in a manner that would defeat the provisions of Article 21 of the Constitution of India guaranteeing the Fundamental Right to Life and Personal Liberty of an individual. That the learned Trial Court was under an obligation to release him on bail as he had, on his part, satisfied the object of the pardon having been tendered to him.

That the prosecution has listed 47 witnesses in the challan and it is understood that the completion of the trial shall take much time. That he cannot be forced to suffer incarceration when primarily he is innocent and secondly he has given a true account of the incident as regards the co-accused without any sort of contradiction. That his detention until termination of the trial is likely to serve no purpose than the denial of fundamental right of liberty to him. That the

object of the legislature in providing for the provisions occurring in Section 306(4)(b) of the Code is needed to be interpreted and understood in the light of the foregoing part of the provisions providing that, "unless he is already on bail". That it is not the case of the prosecution/respondent before the learned Trial Court or even before this court that he has not stood by his statement upon which he was tendered pardon. That he shall abide by any conditions that may be imposed by this court.

5. The petitioner has accordingly sought for the quashment of the impugned order dated 05.04.2025 passed by the learned Trial Court while rejecting his bail application.

6. The respondent UT in its memo of objections has revealed the facts of the case leading to the occurrence and involvement of the accused persons, including the petitioner. However, nothing has been pleaded concerning the issue under adjudication, that is, whether in the facts and circumstances of the case the petitioner can/cannot be granted bail as an approver having already been tendered pardon as per the provisions of Section 306 of the Code?

7. I have heard learned counsel for the parties and considered their submissions.

8. I have perused the record of the instant petition, especially the memo of petition, the impugned order dated 05.04.2025, the First Information Report, the final report/challan, the statement dated 24.08.2024 recorded by the learned Chief Judicial Magistrate, Poonch, statement dated 08.03.2025 of the petitioner recorded at the trial as a prosecution witness. I have also gone through the memo of objections.

9. Keeping in view the aforementioned perusal and consideration, this Court having regard to the facts and circumstances of the case, is of the considered opinion that the order impugned dated 05.04.2025 of the learned Trial Court suffers from illegality and defeats the ends of justice.

10. As herein before mentioned, it is the case of the petitioner that he has got initially trapped in the case when he is innocent and did not commit any offense, more so as mentioned in the final report/charge sheet. The petitioner in his earlier statement before the learned Chief Judicial Magistrate, as well as in his statement recorded at the trial as a prosecution witness, has given a uniform

and uncontradictory account of the circumstances relating to the part played by him and the accusation of the co-accused. He has deposed in both the statements that he knows the co-accused facing trial, namely Gulshan Ahmed and Mehraj Ahmed Sheikh, and has identified them in the court on today also. That he does not know the co-accused Abid Ramzan, who has been proceeded in terms of Section 299 of the Code. That he knows the co-accused Gulshan Ahmed since 2015-16, when he was running a computer shop at Surankote as he used to go to him in connection with filling up of different employment forms. That during those days, the co-accused Gulshan obtained loan from the Jammu and Kashmir Bank and kept him (petitioner) as a guarantor. That in the year 2018, the said co-accused Gulshan Ahmad again told him that he has to make extension of his shop, in connection whereof he has approached the SFC Rajouri for loan to the extent of Rs. 5 lakhs. That he again kept him guarantor for the said loan. That since his earlier bank loan was running satisfactorily and he did not receive any information regarding any default in payment of instalments by the co-accused Gulshan, as such, he felt no hesitation in again remaining his guarantor for the SFC loan. That in the year 2019, the co-accused Gulshan Ahmad along with some persons started a Force Trading business, which was a sort of online business whereby they used to assure the people to get their amounts doubled within a short period of time. That a huge number of persons parted money and deposited with the Force Trading business of the co-accused. That subsequently the main agent of the company, Rizwan Ahmed Sheikh, absconded after getting huge money in his account. That the depositors approached the co-accused Gulshan and pressurized him for refunding their amount, so much so that a case FIR was also registered against him. That the co-accused Gulshan remained arrested in the said FIR and was granted bail after a gap of seven to eight months. That during his arrest in the said case, the Jammu and Kashmir Bank and the SFC started deducting instalments from his (petitioner's) salary account. That about more than two lakh of rupees came to be deducted from his (petitioner's) salary account on monthly basis during some months. That thereafter the SFC people told him that if the co-accused Gulshan Ahmad/borrower will deposit an amount of Rs. 90,000 in his loan account, they can issue an NOC for stopping deduction from his salary account

by his DDO. That he accordingly told the co-accused Gulshan Ahmad regarding the matter, who assured him that he will arrange for the said money so that no deductions are made from his account. That on 14.04.2023 at about 7:30 AM in the morning, the said co-accused Gulshan told him for accompanying him up to Rajouri as he has to collect money therefrom. That he in good faith believing that the accused will arrange for money to deposit in the loan account, left from the home in his vehicle to accompany the said co-accused Gulshan. That while proceeding towards the destination known to the co-accused, he asked him to stop somewhere near a temple and some residential houses telling him that he will come back with money. That he accordingly came back after 10 minutes and boarded in the vehicle. That after traveling for about 4 to 5 km, he asked the co-accused Gulshan as to whether he has got money, whereupon the said co-accused displayed a bag he had kept within his legs containing two pistols, four magazines, and three lakhs currency besides some papers. That the co-accused told him forcibly for taking possession of one pistol and two magazines, saying that the same has been sent by terrorist Abid Ramzan, resident of Shopian, who is active in the area since 7-8 years. That upon feeling scared, he, under compelling circumstances, took the said articles as the co-accused also threatened him of danger to his life and family. That while returning and upon reaching Bharot, the co-accused Gulshan told him for stopping. That in the meanwhile, a boy came who was handed over some papers. That the accused Gulshan revealed the name of the said boy as Mehraj Ahmed Sheikh, resident of Bhonikhet, also being witnessed by him (petitioner/witness) in the court on today through VC. That thereafter he, i.e. the petitioner, talked to his cousin Farooq Feroz on phone who is the resident of Thanamandi. That he told him to accompany him as they had to play a cricket match on the next day. That when we reached Thanamandi, his cousin Farooq Feroz was standing on the road and he also boarded in the vehicle on the back seat. That when they crossed Dera Gali and reached the Buffliaz, they witnessed the Police Naka who stopped them. That upon their search, they recovered arms and ammunition from them as well as some posters. That they were taken in custody by the police. That he told the police party that he was not involved in the case but has been got trapped by the co-accused Gulshan.

That they were all interrogated at JIC and the co-accused Gulshan also told in his presence to the interrogators that he, i.e. the petitioner, is not involved in the case. That two days after their arrest in the case, a blast occurred at Surankote besides some casualties also took place at Dera Gali. That he was not in a position to give the true account of the incident during the said time. That thereafter he wrote an application from prison expressing his willingness to become an approver. That he was accordingly brought before the learned Chief Judicial Magistrate who granted him pardon and also recorded his statement on 24-8-2024. That the contents of the said statement are true and correct. That subsequently he was examined at trial after his physical appearance and was subjected to examination-in-chief as well as cross-examination by the two sides. In cross-examination, the petitioner inter-alia deposed that when the co-accused Gulshan told him for accompanying him to Dhangri, Rajouri, the Gulshan told him that he will get some money from there. That since he (that is, the petitioner) knew that the co-accused Gulshan is also indulging in bovine smuggling, as such, believed that he would have to get money from the said place from someone. That he did not express his willingness during investigation of the case for becoming an approver as he was under acute pressure during such period. That he did not make any attempt to deboard the co-accused Gulshan along the way on incident day or to report the incident to some Police Post as the circumstances were not felt favorable by him. That his cousin Farooq Feroz was let off by the investigating agency for want of any evidence against him. That it is not true that he got the statement recorded as an approver in order to save himself.

11. It is profitable to reproduce the provisions of Section 306 of the code corresponding to provisions of Section 343 of the BNSS relating to the law on the subject for the sake of convenience.

Tender of pardon to accomplice

- (1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative

to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to—

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952);

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record—

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)—

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case—

(a) commit it for trial—

(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

12. Now the issue for adjudication before this court is whether the provisions of section 306(4)(b) of the Code operate as a blanket ban for releasing an approver having been tendered pardon pending termination of the trial?

13. This court is of the opinion that the aforesaid provisions of the law do not restrict but limit the powers of the court to release an approver having been granted pardon pending termination of the trial. The provisions of Section 306 (4) (b) of the Code are needed to be read conjointly as through the foregoing words, it is mentioned, "shall, unless he is already on bail", followed by the words, "be detained in custody until the termination of the trial". The object of the provision logically appears to be giving protection to the approver from the apprehended threat or danger to his person or to the person of anyone in whom

he is interested pending termination of the trial and secondly to facilitate the giving of the true account of the incident by him at the trial of the case as regards himself and to every other person concerned as per his knowledge and in corroboration of his earlier statement recorded at the time of granting him pardon. The provisions regarding the tender of pardon to accomplices are intended to take care of such eventualities when a crime is committed in secrecy without being witnessed directly by any person, so that the guilty persons will not escape punishment for want of evidence. Once an accused is tendered pardon, on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offenses and to every other person concerned whether as principal or abettor, he ceases to be categorized as an accused as long as he makes a full and true account of the whole of the circumstances within his knowledge at the trial of the case in corroboration of his earlier statement being recorded at the time of tendering him pardon. When an approver after getting his statement recorded at the trial of the case to the satisfaction of the prosecution and without any objection on the part of public prosecutor to the effect that he wilfully concealed anything essential or by giving false evidence, not complied with the condition on which the tender was made, applies voluntarily for his release, he needs to be released on bail subject to some reasonable terms and conditions.

14. However, this court is of the opinion that the right of the public prosecutor to satisfy his opinion regarding the person who is accepting the tender of pardon under the provisions of Section 306 or Section 307 of the Code in terms of Section 308 of the Code as to whether such person has wilfully concealed anything essential or by giving a false evidence has not complied with the conditions on which the tender was made, continues up to the closure of the evidence on both the sides in the case.

15. The provisions of Section 308 deal with the law regarding the separate trial of the approver having been granted pardon in case the court, on the application and certificate of the public prosecutor, passes an order to the effect that such person has wilfully concealed anything essential or has given false evidence not only for the offense in which he was granted pardon but also for the offense of giving false evidence. The provisions of Article 21 of the

Constitution of India read with the provisions of Section 528 of BNSS corresponding to Section 482 of the Code have an overriding effect over the provisions of Section 306 of the Code to pass such an order which is in consonance with the sacred right of liberty and meets the ends of justice.

16. The Supreme Court has, in the case of ***Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80***, while discussing the object of requiring an approver to be detained in custody until termination of the trial, observed that the same is not intended to punish the approver for having come forward to give evidence in support of the prosecution but to protect him from the possible indignation, rage and resentment of his associates in a crime whom he has chosen to expose as well as with a view to prevent him from temptation of saving his onetime friends and companions after he is granted pardon and released from custody.

17. The question whether bail can be granted to an approver during trial of a case came up for consideration before this Court in the case of ***Mohammad Lateef Deedar v. State, 2010 Supreme (J&K) 308***. This Court while interpreting the provisions contained in sub-section (3) of Section 337 of the J&K Cr. P. C, which is in pari-materia, with the provisions contained in Section 306(4)(b) of the Code of Criminal Procedure, 1973, has held that High Court is vested with jurisdiction to enlarge an approver on bail even before conclusion of trial in appropriate cases. In this regard, paras 11, 14, 15 and 16 of the said judgment are relevant to the context and the same are reproduced as under:

"11. Sub section 3 of section 337 SVT 1989 cannot be interpreted in a manner which would defeat the mandate contained in Article 21 of the Constitution of India. What purpose is to be achieved by keeping an approver in custody during the trial after he satisfactorily complies with the terms and conditions of the order of pardon. The custody of an approver is co-terminus with fulfillment of terms and conditions of the order of tender of pardon. The moment he complies with the terms and conditions of tender of pardon, he gets right to be released. Keeping such a person detained until termination of the trial would not only be violating the constitutional guarantees as contained in Article 21 of the Constitution of India but would also tantamount to inflicting punishment on him.

14. The expression 'unless he is already on bail' occurring in sub section 3 of section 337 SVT 1989, apparently, makes it writ large

on the face of the statute that the trial Court, in the facts and circumstances of the case, has the power to grant bail to an accused person under sections 497/498 Cr. P.C. It appears the said power of admitting the accused person to bail is, thus, retained by sub section 3 of section 337 SVT 1989 and has not been taken away. Otherwise also sections 497/498 Cr. P.C. confer discretionary power on the Court to admit an accused to bail in accordance with the settled principles and norms of law. If the Court of competent jurisdiction is having jurisdiction to admit and enlarge an accused person to bail, the said power of admitting an approver to bail, if denied to the trial Court/Court of competent jurisdiction, will inflict an irreparable damage on the rights of the person who turns approver and is granted pardon and satisfies the terms and conditions of the tender of pardon. Such a person would land in worst position vis-a-vis the perpetrators of crime. Assume a situation that trial Court admits the accused person to bail on some valid legal grounds, which would include lack of material supporting the prosecution case, on the interpretation of sub section 3 of section 337 SVT 1989, as put by learned counsel for the respondents, the approver who has been tendered pardon has to remain in custody until termination of trial. This will not only create an absurd situation but will be against the basic fundamentals of the Constitution. The provision of law cannot be given such an interpretation which will create an absurd situation and will render it unjust as well. The power to grant or refuse bail is a power conferred by statute on a Court of law. This power cannot be taken away by any judicial interpretation as any such interpretation will tantamount to legislating the law which does not fall within the domain of Courts. The expression 'unless he is already on bail' occurring in sub section 3 of section 337 SVT 1989 preserves the power of grant of bail, which power is correlated to the right to personal liberty guaranteed under Article 21 of the Constitution of India. Sub section 3 of section 337 SVT 1989, thus, may not restrict the jurisdiction of the trial Court to consider the grant of bail to an approver in terms of sections 497/498 of SVT 1989. Otherwise the sub section 3 of section 337 SVT 1989 would fall foul of Articles 14 and 21 of the Constitution of India. This issue of competence of the trial Court to grant bail to an approver has not been raised and debated, as such is left open to be decided in an appropriate case.

15. The approver who is tendered pardon, on satisfaction of conditions contained therein, ceases to be an accused and has to get benefit of pardon, which would mean that he is not to be punished. In such eventuality, he may not even be required to be asked to furnish bail and surety bonds. He can be released on furnishing Undertaking/Personal bond to faithfully continue to abide by the terms and conditions of tender of pardon. The Hon'ble Supreme Court in case titled State (Delhi Administration) Appellant v. Jagjit Singh-Respondent, reported in 1989 Supp (2)

SCC 770: AIR 1989 SC 598, has held that once an accused is granted pardon under Code of Criminal Procedure (Cr.PC), he ceases to be an accused and becomes witness for the prosecution. It is further ruled that so long as the prosecution does not certify that he has failed to comply with the conditions of grant of pardon, he continues to be a witness.

16. In view of the discussion made hereinabove, can it still be said that an approver, who satisfies the terms and conditions of the tender of pardon, cannot be ordered to be released from prison. In order to meet such like eventualities, the legislators have enacted section 561-A Cr. PC, Svt 1989 which provides saving of inherent power of High Court, Section 337 Svt 1989 falls under Chapter XXIV and Section 561-A falls under Chapter XLVI, Section 561-A is reproduced hereunder:

“561-A. Saving of inherent power of High Court nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

18. This court has also in *Bilal Ahmed Lone vs UT of Jammu and Kashmir and others CRM M number 656/2023 decided on 13-9-2024* held under similar circumstances that an approver can be granted bail before the conclusion of trial if there are exceptional and reasonable circumstances and the conditions of pardon have been satisfied. It is profitable to reproduce Paras 20 and 21 of the judgment for ready reference:

20 From the foregoing analysis of the law on the subject, it is clear that this Court in exercise of its power under Section 482 of the Cr. P. C is vested with jurisdiction to enlarge an approver on bail even before culmination of the trial provided there are exceptional and reasonable circumstances involved in a particular case.

21 The inherent powers vested in the High Court in terms of Section 482 of the Cr. P. C manifestly confirms the aforesaid position of law. As per the aforesaid provision, nothing in the Code of Criminal Procedure can limit or effect the inherent powers of the High Court to make such orders, as may be necessary to give effect to any order under the Code or to prevent the abuse of process of Court or otherwise to secure the ends of justice. Thus, any fetter or restriction contained in the Criminal Procedure Code, 1973, which includes clause (4)(b) of Section 306 of the Cr. P. C, cannot take away the powers of the High Court to grant bail to an approver if it finds that the same is required to be done to secure the ends of justice. It is obligatory for this Court to interpret the provisions contained in Section 306(4)(b) read with Section 482 of

the Cr. P. C in a manner that would advance the cause of justice, otherwise we may find cases of hardship where an approver can approach the High Court for release on bail but because of the provisions contained in Section 306(4)(b) of the Cr. P. C, he may not be able to secure bail. This would certainly be violative of Article 21 of the Constitution of India, thereby posing a serious challenge to the vires of Section 306(4)(b) of the Cr. P. C. It is, therefore, imperative for the Court to interpret the said provisions in a manner that would leave scope for the High Court to exercise its inherent powers for releasing an approver on bail in appropriate cases.

19. It is well settled by a catena of judgments of Hon'ble Apex Court and various other High Courts of our country including this Court, that although the provisions of Section 306(4)(b) of the Code corresponding to the provisions of Section 343(4)(b) of the BNSS, ordinarily require the detention of an approver until the termination of the trial, yet High Court in an appropriate case can exercise its inherent powers under Section 482 of the code corresponding to Section 528 of BNSS to release him on bail. The continued detention of an approver despite compliance with pardon conditions may violate Article 21 of the Constitution guaranteeing a sacred human right of personal liberty. That the release on bail of an approver does not vitiate the validly granted to the pardon. The dominant object of requiring an approver to be detained in custody until the termination of the trial, is not intended to punish him for having come forward to give evidence in support of the prosecution, but to protect him from the possible indignation, rage and resentment of his associates in a crime, to whom he has chosen to expose, as well as with a view to prevent him from temptation of saving his associates after being granted pardon and before his releasing on bail.

20. Once an accused is granted pardon as per the law, he ceases to be an accused and becomes a witness for the prosecution. So long as the prosecution does not certify that he has failed to comply with the conditions of grant of pardon, he continues to be a witness. High Court under appropriate circumstances can invoke its extraordinary powers vested in it under Section 482 of the Code corresponding to Section 528 of BNSS for the release on bail of an approver pending trial of the case. Provisions contained in Section 306(4)(b) of the Code cannot be interspersed to defeat Article 21 of the

Constitution. Custody of an approver is co-terminus with fulfillment of pardon conditions. Section 306(4)(b) of the Code appears to be directory and not mandatory. An approver who has already been examined as a prosecution witness and has complied with the terms and conditions of the pardon by maintaining his earlier statement recorded at the time of granting him pardon should not be detained indefinitely. Such a person cannot invoke the provisions of Section 439 of the Code corresponding to Section 483 of BNSS for the simple reason of, not being in the category of an accused, with the application of provisions of Section 306 of the Code corresponding to Section 343 BNSS, in his case.

- I. (Suresh Chandra Bahri vs State of Bihar AIR 1994 SC 2420
- II. State Delhi Administration vs. Jagjit Singh AIR 1989 SC 598
- III. Sudhanshu Ranjan @ Chottu Singh vs. The Union of India Through National Investigation Agency, New Delhi 2022 Supreme (J&K) 910
- IV. Mohd Lateef Deedar vs State 2010 Supreme (J&K) 308
- V. Mohd Sultan Mir vs State of J&K 2010 Legal Eagle (J&K) 149
- VI. Kumad Kumar Mandal vs. State of J&K 2007, Supreme (J&K) 467
- VII. Tariq Ahmad Dar vs. National Investigation Agency Through NIA P/S New Delhi 2023 SCC Online J&K 236

21. This Court is of the opinion that besides availing remedy under Section 482 of the Code (528 BNSS), an aggrieved “Approver” under appropriate circumstances can even invoke the writ jurisdiction under Article 226 of the Constitution before a High Court seeking his release on bail pending termination of the trial, by satisfying the Court that he has fully complied with the terms and conditions of the pardon by giving his statement at the trial of the case facing the cross-examination also, without any contradiction or retraction vis.a.vis his earlier statement recorded by the Chief Judicial/Metropolitan Magistrate at the time of granting him pardon and that he seeks his enlargement in the case before the conclusion of the trial, at his own risk and responsibility. He is not even needed to plead that the trial of the case is not likely to conclude within a short span of time. He is rather needed to plead that his unnecessary detention in the facts and circumstances of the case shall deprive him of his

Right to Liberty guaranteed under Article 21 of the Constitution. Any strict interpretation of the Clause 4(b) of Section 306 of the Code [4(b) of Section 343 BNSS] will tantamount to acknowledging a procedure which is not fair, just and reasonable, especially when an, “Approver” is found to have stood by his disclosure upto the trial, without any sort of contradiction or retraction, deformation or distortion being apparent by no objection on the part of the Public Prosecutor in relation to his statement at the trial as a prosecution witness. After an “Approver” complies fully with the conditions of his pardon, the only concern which needs to be addressed is whether out of his/her free will and choice, he/she wants to be enlarged pending conclusion of the trial, as the main logical object of the provisions of the Section 306(4)(b) of the Code is to prevent the Approver from any possible indignation, rage, resentment of his guilty partners whom he has chosen to expose, together with any apprehension or his retraction from the earlier account/disclosure meriting his pardon.

Once the statement of an “Approver” is recorded even at the trial without any objection from the Public Prosecutor that can lead to his/her indictment under Section 308 of the Code and secondly when he/she willingly seeks his/her enlargement, there should be no objection in his/her release on bail subject to final orders at the conclusion of the trial.

22. An “Approver” cannot be forced to suffer detention against his will, even after standing by his disclosure and complying with the terms of his pardon at the trial as a prosecution witness. The mandate of Article 21 of our Constitution as interpreted in Maneka Gandhi’s case is that no one shall be deprived of his life and personal liberty except by procedure established by law, which must be reasonable, fair and just but not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power of judicial review, whether the deprivation of life or personal liberty in a given case is, by procedure, which is reasonable, fair and just or it is otherwise.

23. The provisions of Section 306(4)(b) of the Code [Section 343(4)(b) BNSS] in their present form are never ultra vires the constitution as the care of important issues is being taken under such provisions viz.

- I. Approver shall not retract from his disclosure pursuant to which he/she was granted pardon.

II. Approver shall not feel scared of his being at large due to the possible danger at the instance of his associates whom he/she has chosen to expose.

What is needed by the Court is the logical interpretation of the said provisions of law in the given facts and circumstances of the case. However, what is important is that the provisions of the Section 306 of the Code [343 of BNSS] shall not be misused for accomplishment of ulterior motives.

The pardon under the provisions of the law is given to an accused notwithstanding his extent of involvement. Pardon needs to be tendered at the request of the Investigating Officer, upon his satisfying the Court in writing that a reasonable and fair need has arisen in the facts and circumstances of the case for granting pardon to an accused on the conditions as laid down in Section 306 of the Code, having regard to the nature of the available evidence and the seriousness of the crime.

24. A casual and an unfair invocation of the provisions of the Section 306 of the Code corresponding to Section 343 of the BNSS is likely to cause serious miscarriage of justice. Investigating Agency in a particular case shall take a reasoned decision in the facts and the circumstances of the case especially having regard to the nature of the available evidence, before either offering a co-accused 'Tender of Pardon' or accepting his offer for the same.

25. However, the right of the Public Prosecutor to certify that in his opinion the "Approver" has willfully concealed anything essential or by giving false evidence has not complied with the conditions on which the tender was made, in terms of the provisions of Section 308 of the Code corresponding to Section 345 of BNSS, has to remain till the recording of the evidence on both the sides, for any consequent action as provided under the said provisions. An approver having been tendered pardon is not only required to stand by his statement recorded earlier before a Chief Judicial/Metropolitan Magistrate or a Magistrate of the First Class inquiring or trying the offence at the time of tendering him pardon but he is rather required to make a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned whether as a principal or abettor in the commission thereof. Such a fact can be fully ascertained only after recording of the

evidence on both the sides. Any possibility of a fact being brought at the trial through either prosecution or defense evidence disputing the disclosure of the “Approver” as being full and true cannot be ruled out. The final/absolute orders regarding the treatment to be given to the “Approver” can be passed at the final disposal of the case.

26. However, where subject to final outcome of the trial, an “Approver” prima facie appears to have complied with the conditions of pardon by getting his statement recorded at the trial as the prosecution evidence, without any contradiction and is further ready and willing at his own risk and responsibility to be enlarged, he deserves to be so enlarged on bail subject to some reasonable terms and conditions.

27. In the backdrop, the instant petition is allowed and the order impugned dated 05.04.2025 of the Id. Trial Court is set aside. The petitioner-Ajaz Ahmad, S/o. Abdul Rashid R/o. Village Sailan Tehsil Surankote, District Poonch is admitted to bail in the case FIR No. 358/2023 of Police Station, Surankote Poonch subject to his furnishing of surety and personal bonds to the tune of Rs. 1 Lac (One Lac) respectively to the satisfaction of Id. Registrar Judicial, Jammu Wing, of this Court and the Superintendent of the Jail concerned for assuring this Court that he shall appear at the trial of the case, if so directed, and shall abide by any subsequent orders, if any, passed in the case in relation to his person. In case the requisite surety bond is furnished to the satisfaction of the Id. Registry Judicial, Jammu Wing, and attested by her, the Registry shall issue a formal Release Order directing the Superintendent of the Jail concerned for release of the petitioner forthwith in the case after obtaining the requisite personal bond in the amount of Rs. One Lac from him.

28. **Disposed of.**

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR

23.03.2026

Shahid Manzoor

Whether the judgment is speaking

Yes

Whether approved for reporting

Yes