



2026:JKLHC-SGR:119

S. No.

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

Bail App No. 15/2026
CrlM No.150/2026

Reserved on: 12.03.2026
Pronounced on: 14.05.2026
Uploaded on: 15.05.2026

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

Dr. Abdul Majeed Bhat, S/o Abdul Aziz Bhat
R/o Kremshora, Budgam, aged 50 years
Through his wife Rukhsana Yossof

.....Petitioner(s)

Through: Mr. Umar Rashid Wani, Advocate

Vs

Union Territory of J&K,
Through SHO Police Station, Khan Sahib,
Budgam

..... Respondent(s)

Through: Mr. Bikramdeep Singh, Dy AG

Coram: HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGMENT

01. Through the medium of instant successive petition filed in terms of the provisions of Section 483 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS' for short), bail on behalf of the petitioner/accused in case FIR No. 10/2026 under Sections 64/62 of Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as 'BNS' for short), has been sought on the grounds *inter alia* that he is innocent and has not committed the alleged offences. That he was arrested in the case FIR on 14.01.2026 and since then has been in custody. That the final report/challan arising out of the case FIR in question was already filed before the Court of



learned Additional Sessions Judge, Budgam (hereinafter referred to as '**the Trial Court**' for short) and is pending disposal. That he is a doctor by profession and was posted on the day of occurrence at Primary Health Centre (PHC), Gurwaith, Khan Sahib, Budgam.

That on 14.01.2026, the complainant approached the PHC for her medical examination and treatment, who was suffering from some gynecological related infections and after she consented for the examination by the petitioner-doctor, she, however, during her examination doubted the bonafides of the petitioner as a doctor and under a mistaken belief presumed the guilty intention of the petitioner and proceeded to lodge a complaint against him with Police Station, Khan Sahib. That there is complete contradiction in her first statement made through the complaint/First Information Report and her subsequent statements given during investigation of the case.

That in her First Information Report that led to the registration of the case FIR in question, she alleged that during her medical examination, the petitioner took her to another room, did not allow her sister-in-law to accompany her, asked to remove clothes, tried to pull the robe of her pyjama and attempted to commit rape upon her after allegedly grabbing her breast, to which she resisted and escaped. That during investigation of the case, the police concerned submitted a report on 22.01.2026 to the Court in connection with his earlier bail application in which it was mentioned that the petitioner/accused allegedly placed one hand on the chest of the victim and another hand inside her private part, thereby projecting the allegation of commission of rape in contradiction to her earlier statement of attempt to



rape.

That the learned Trial Court rejected the earlier bail application of the petitioner/accused, upon being influenced by the seriousness of the allegations against the petitioner being a doctor. That the petitioner/accused is presumed to be innocent till proved guilty at the trial and as such, his continued incarceration from the date of his arrest on 14.01.2026 tantamounts to his pre-trial conviction. That since the trial in the case FIR is already going on before the learned Trial Court, as such, there is no need of the petitioner/accused in custody. That the petitioner/accused as a professional practitioner/doctor stands insulated under the statutory exception relating to medical examination under Section 63 of BNS. That the bail application deserves to be considered on account of the Constitutional Test of “**Necessity of Custody**”. That no purpose is likely to be served by keeping the petitioner in custody. That the petitioner being a professional doctor is deeply rooted in the society and enjoys a great social status. That there is no question of misusing the concession of bail by tampering with the prosecution evidence or by absconding at the trial. That the petitioner/accused is ready to abide by any conditions that may be imposed by this Court.

02. The respondent/UT of J&K through Police Station, Khan Sahib resisted the bail petition on the grounds that the petitioner/accused is *prima facie* involved in the commission of serious offences punishable under Sections 64/62 of BNS and as such does not deserve the concession of bail. That the petitioner/accused is involved in the commission of rape which is grave offence having serious social consequences. That the offences committed



by the petitioner/accused are punishable with sentence which may extend to imprisonment for life. That under the threat of severity of the punishment provided for the offences committed by the petitioner/accused, he is likely to evade trial if released on bail.

That the accused being a Medical Practitioner was in a position of trust and dominance over the victim who had approached him for medical treatment, and therefore the offence is aggravated in nature involving abuse of professional position. That the offence alleged against the petitioner was committed while he was discharging his duties as a Medical Officer, and thus involves gross abuse of professional trust and fiduciary relationship. That the petitioner/accused, being a Medical Practitioner posted at the Health Centre, was in a position of trust, authority and dominance over the victim who had approached him for medical treatment. That the rape is the fastest growing crime which is most terrible, belligerent and atrocious in nature and undermines the dignity of the women. That rape has been held to be more serious than Murder which leaves a permanent scar on the life of the victim. That given the violent nature of the assault on the complainant, as evidenced by statements and corroborating evidence, there is a reasonable apprehension that the accused might attempt to intimidate or influence the complainant or witnesses if released on bail. That the material collected during investigation clearly reflects the active involvement of the accused in the commission of the offences and the same is duly corroborated by statements recorded under Section 183 BNSS. That the offences in which the above named accused is involved are grave and heinous in nature. That the rape cases are on the rise



in the country which are predominantly against the women and have adverse effect on the psyche of the woman making the rest of the life traumatic and as such the release of the accused will have a deleterious effect on the minds of the general public. That there is credible and cogent evidence available *viz-a-viz* involvement of above named accused in the commission of aforesaid offences. That the Hon'ble Supreme Court in **State of U.P. v. Amarmani Tripathi (2005) 8 SCC 21** has laid down the parameters governing grant of bail in non-bailable offences That further, in **Mahipal v. Rajesh Kumar (2020) 2 SCC 178**, it has been held that courts must record reasons while granting bail in serious offences and gravity cannot be ignored. That the Hon'ble Supreme court has laid down broad principles/guidelines while considering the bail application under section 439 Cr.PC corresponding to section 483 BNSS more particularly in the cases where offences are committed against women. That in **Dipak Shubhash Chandra Mehta Vs Central Bureau of Investigation and Another 2012 (4) SCC 134**, the Hon'ble Apex Court has held that:

"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, detailed examination of evidence and elaborate documentation of the merits 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.... "

That the accused has committed offences which are condemnable and heinous in nature and are having serious ramifications as the same are running contrary to the larger public interests. That bail has already been denied to the petitioner/accused by the learned Trial Court.



- 03.** I have heard the learned counsel for the parties and considered their rival submissions.
- 04.** Keeping in view the perusal of the instant successive bail petition, the objections filed in rebuttal by the prosecution and the consideration of the rival arguments advanced on both the sides, the Court is of the opinion that it may meet the ends of justice in case the application is allowed and the petitioner is admitted to bail in case FIR No. 10/2026 of Police Station Khan Sahib, Budgam subject to some reasonable terms and conditions.
- 05.** The brief facts of the prosecution case relevant for disposal of this successive bail petition are that on 14.01.2026 a written complainant was received by Police Station Khansahib from Mst. Dilshada Akhter W/O Nazir Ahmad Najar R/O Gurwaith Kalan stating therein that she went to Health Centre Gurwaith-Kalan for treatment. That during her examination the on-duty Doctor asked her to enter in another room for treatment, the complainant requested on-duty Doctor to allow her sister-in-law to accompany her but the Doctor denied her request. That while examining her, she was asked to put-off her clothes with evil intention to rape her. That the doctor grabbed her breast also. That on receiving the said complaint, case FIR No. 10/2026 under Section 62/64 of BNS came to be registered. That during investigation the Investigating Officer along with Forensic Science Laboratory (FSL) Team of DPL, Budgam visited the place of occurrence and completed all initial formalities including preparation of site plan, medical examination of the victim and recording of statements of witnesses. That during investigation the copies of out-patient register as well as the staff attendance register of the said health centre



were seized. That the said Doctor was identified as Abdul Majid Bhat @ Dr.Majid S/O Abdul Aziz Bhat R/O Kremshora and was formally arrested in the case on the same day.

That during investigation the statement of victim as well as her sister-in-law namely Ishrat W/o Reyaz Ahmad Najar R/o Gurwait Kalan was also got recorded in terms of the provisions of Section 183 of BNSS. That besides the statements of two employees of the said health centre came also be recorded. That the accused is presently lodged in Central Jail Srinagar as an under trial in the case FIR.

- 06.** The accused is reported to have been arrested in the case FIR in question on the very date of occurrence i.e., 14.01.2026 and is continuously under detention in the case presently as under trial. The offences alleged against the petitioner/accused i.e 62 read with 64 BNS carries a maximum sentence which may extend to one half of the imprisonment for life, which does not attract the embargo under the provisions of Section 480 of BNSS. There appears to be no compelling need for the petitioner/accused in custody. The petitioner/accused is presumed to be innocent till proved guilty at the trial. He also has a constitutional guarantee of his liberty under the provisions of Article 21 of the Constitution of India.
- 07.** Having regard to his social position as a Doctor, he is not believed to misuse the concession of bail, if granted in his favour. The apprehensions of the prosecution can however be met by imposing reasonable bail conditions. The object of the bail is to give the accused in custody of a surety who will be required to subject himself to the final outcome of the trial of the case.



- 08. It is very needful to mention that the final report/challan in the case FIR in question has already been presented before the Court under Section 62/64 BNS. The Section 62 BNS relates the punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. It as such clear from the perusal of the final report/challan that the petitioner/accused is alleged to have attempted the commission of rape punishable under section 64 BNS. However, the respondent/UT in its objections has inter alia pleaded that the petitioner/accused is involved in the commission of rape as defined under Section 63 of the BNS.**

As verified from the trial Court, the petitioner/accused has been charged for the commission of the offence punishable under Section 62/64 of BNS vide order dated 25.03.2026.

- 09. Admittedly, in case of non-bailable offences which do not carry a sentence of death or imprisonment for life in alternative, bail is a rule and its denial an exception especially in cases where firstly the custodial questioning of an accused is not imperative for the logical and scientific conclusion of the investigation and secondly where there is nothing on record to show that the accused, if admitted to bail, will misuse the concession by tampering with the prosecution evidence, by non-cooperation and association with the investigating agency and also by absconding at the trial.**
- 10. Apart from the statutory bar, if any, two paramount considerations viz. likelihood of accused fleeing from justice and tampering with the prosecution evidence relate to the ensuring of a fair trial of the case in a court of law. It is essential that due and proper appreciation and weightage**



should be bestowed on these factors apart from others. The grant of bail or the denial of the same falls within the purview of the judicial discretion meant to be exercised on sound legal principles upon the logical interpretation and application of the same in the given facts and circumstances of the case. The necessary arrests subject to the law of bails as provided under the Code, BNSS and the provisions of different special Legislations are permissible under the Constitution of our Country by way of a reasonable exception to the fundamental right to liberty guaranteed under Article 21 of the Constitution and the mandate of the provisions of Article 22 of the Constitution is meant to be followed upon making any such necessary arrests.

11. In **State of Rajasthan Jaipur Vs. Balchand AIR 1977 S.C. 2447**, the Hon^{ble} Apex Court has held, "basic rule may perhaps be tersely put as bail not jail, except where there are circumstances of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating the witnesses and the like, by the petitioner who seeks enlargement on bail from the court.
12. It is also well settled that the bar imposed under section 480 of BNSS on the exercise of the discretion in the matters of bail subject to proviso contained in the section, is confined to the offences carrying a sentence of death or imprisonment for life in alternative and the offences carrying a sentence of imprisonment for life disjunctive of death sentence are exempted from the embargo.
13. No single rule or a golden litmus test is applicable for consideration of a bail application and instead some material principles/guidelines are needed



to be kept in mind by the Courts and the Magistrates for consideration of a bail application especially including:-

- i. The judicial discretion must be exercised with the utmost care and circumspection;
- ii. That the Court must duly consider the nature and the circumstances of the case;
- iii. Reasonable apprehension of the witnesses being tampered;
- iv. Investigation being hampered or
- v. The judicial process being impeded or subverted.
- vi. The liberty of an individual must be balanced against the larger interests of the society and the State.
- vii. The court must weigh in the judicial scales, pros and cons varying from case to case.
- viii. Grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the rule;
- ix. The court at this stage is not conducting a preliminary trial but only seeking whether there is a case to go for trial;
- x. The nature of the charge is the vital factor, the nature of evidence is also pertinent, the punishment to which the party may be liable also bears upon the matter and the likelihood of the applicant interfering with the witnesses or otherwise polluting the course or justice, has also a bearing on the matter.
- xi. The facts and circumstances of the case play a predominant role.

14. The Hon'ble Apex Court in **Gur Bakash Singh Sibbia Vs. State of Punjab AIR 1980 S.C. 1632**, referred to the following extract from the American Jurisprudence having bearing on the subject of bail, "*where the grant of bail lies within discretion of the court, granting or denial is regulated to a large extent, by the facts and circumstances of each particular case. Since the object of detention order/imprisonment of the accused is to secure his appearance and submission to jurisdiction and the judgment of the court, the preliminary enquiry is whether a recognizance or bond would yield that end. It is thus clear that the question whether to grant bail or not, depends for its answer upon a Variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity for justifying*



the grant or refusal of bail”.

15. It has been laid down by the Hon'ble Supreme Court in **Sanjay Chandra vs. Central Bureau of Investigation AIR 20012 SC 830** at Para 14 of its judgment as under:

14) In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment beings after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship.

From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, necessity is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un- convicted person for the purpose of giving him a taste of imprisonment as a lesson."

16. The Hon'ble Supreme Court in **Dataram Singh vs State of UP and Anr. 2018 3 SCC 22**, has held that even if grant or refusal of bail is entirely the discretion of a Judge, such discretion must be exercised in a judicious manner and in a humane way observing as follows:

"2. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstance of a case.

3. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for



placing that person in judicial custody after a charge-sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure 1973”.

17. **In Pankaj Jain vs Union of India and Anr. 2018 5 SCC 743**, the Hon'ble Supreme Court has held that the grant of bail has to be exercised compassionately. Heinousness of crime by itself cannot be the ground to outrightly deny the benefit of bail if there are other overwhelming circumstances justifying grant of bail. The Hon'ble Apex Court in its Judgments cited as **Siddharam Satlingappa Mhetre Vs. State of Maharashtra AIR 2011 SC 312**, and **Sushila Aggarwal and Ors. Vs. State (NCT of Delhi) & Anr, 2020 SC online 98**, has interpreted law even on the subject of anticipatory bail with a very wide outlook and while interpreting concept of liberty guaranteed under Article 21 of the Constitution of our Country in a flexible and broader sense.
18. Admittedly, the offence charged against the petitioner/accused is heinous in nature and highly anti-social.
19. There is no second opinion that the doctors are respected and trusted as noble men on the earth and there always is a relationship of trust and confidence between the patient and doctor. A Medical Practitioner for the purpose of *bona fide* medical examination and procedure avails the protection under law in justified circumstances. The petitioner/accused has



been in custody in the case since 14.01.2026 i.e for about five months. He is supposed to have been badly suffering on account of his continued detention in the case. The trial of the case is going on and the statements of some material witnesses including the complainant are believed to have been recorded at the trial.

20. For the foregoing discussion, the instant bail petition is allowed and the petitioner/accused, namely, **Dr. Abdul Majeed Bhat, S/o Abdul Aziz Bhat R/o Kremshora, Budgam** is admitted to bail in case FIR No. 10/2026 for the offence under Section 62/64 BNS of Police Station Khan Sahib, Budgam, subject to his furnishing surety & personal bonds in the sum of ₹1,00,000/- each (the surety bond of ₹1,00,000/- to be furnished by two persons from amongst the near relatives of the petitioner, each of whom shall be liable to the extent of ₹50,000/-), to the satisfaction of the learned Trial Court and the Superintendent of the Jail concerned, respectively, for assuring his compliance of the following conditions:

- i) The petitioner/accused shall remain punctual at the trial of the case.
- ii) The petitioner/accused shall not leave the territory of India without prior permission of the learned trial court.
- iii) The petitioner/accused shall not repeat the commission of any crime.
- iv) The petitioner/accused shall not, directly or indirectly, make any inducement, threat, or promise to any of the unexamined prosecution witnesses so as to dissuade them from making true account of the case before the trial court.
- v) The petitioner/accused shall not, in any manner whatsoever, confront the prosecutrix or subject her, directly or indirectly, to any form of criminal intimidation.



21. The learned Trial Court shall be fully competent to proceed against the petitioner/accused in terms of the provisions of Sections 491 and 492 of the BNSS, in the event of violation of any of the aforesaid bail conditions.
22. It is very needful to clarify that nothing stated in this order shall be construed as any prejudging of or interference with the merits of the case, which shall, be the subject matter of the trial.
23. *Disposed of.*

(MOHD YOUSUF WANI)
JUDGE

JAMMU
14.05.2026
Vijay

