

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...
CrlA(D) no.06/2026
CrlM no.114/2026

Reserved on: 13.05.2026
Pronounced on: 20.05.2026
Uploaded on: 20.05.2026

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

1. Imtiyaz Qadir Bhat aged 38 years S/o Gh. Qadir Bhat R/o Chandsooma Kanispora Baramulla
2. Saleem Yousuf Makai aged 37 years S/o Mohd Yousuf Makai R/o Jalal Sahib, Baramulla

.....Appellants(s)

Through: Mr Salih Pirzada, Advocate
Mr Ahmad Basaud, Advocate

Versus

Union Territory of J&K through police station Baramulla

.....Respondent(s)

Through: Mr Mohsin Qadiri, Sr.AAG with
Ms Maha Majeed, assisting counsel

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

1. By way of this appeal under Section 21 of the National Investigation Agency Act, 2008, the appellants challenge the validity of the order dated 31st January 2026, passed by the Court of Special Judge designated under the Unlawful Activities (Prevention) Act, Baramulla at Sopore (hereinafter 'Special Court'). Vide the impugned order, the Special Court rejected the appellants' application for grant of bail in FIR

No. 208/2025 under Section 13 of the Unlawful Activities (Prevention) Act (hereinafter 'the Act').

2. Appellants have assailed order impugned on the following grounds:
 - a) That learned Special Court erred in invoking the statutory bar under Section 43-D (5) of the Act to deny bail to the appellants. The said section is entirely inapplicable to an offence under Section 13 of the Act, which is the subject matter of the instant case.
 - b) That the appellants were not provided with the written grounds of arrest as mandated by law. This deliberate omission on the part of the respondent violates the appellants' fundamental rights and renders the entire arrest illegal, bad in law, and without jurisdiction.
 - c) That there is no material on record against the appellants to sustain the allegation of an offence under Section 13 of the Act. The case of the respondent rests entirely on speculation, conjectures, and surmises regarding a possible commission of the offence.
3. Respondent has filed its latest status report dated 28th April 2026. Apart from narrating the factual matrix, which we shall refer to later, the report states that the investigation is actively underway. It highlights that the Forensic Science Laboratory (FSL) opinion has been received regarding a Hard Disk Drive (HDD) containing a vast volume of extracted data from the seized electronic devices, which is currently undergoing thorough examination. Respondent asserts that a strong *prima facie* case exists against the appellants. It is submitted that the case diary contains substantial incriminating material, including witness statements, electronic evidence, and forensic reports, establishing the appellants' involvement. Consequently, it is contended

that the learned Special Court rightly rejected the appellants' bail application vide impugned order dated 31st January 2026.

4. Learned counsel for the appellants submitted that the appellants were arrested on 25th November 2025 and are currently in judicial custody. He further contended that the sole allegation against the appellants pertains to the possession of certain literature, which the respondents allege is prejudicial to the security and sovereignty of the State and was intended to promote a secessionist agenda. He asserted that there is an absolute lack of concrete or incriminating evidence on record to substantiate these claims against the appellants. It is further submitted that the learned Special Court erred in applying Section 43-D(5) of the Act to reject the bail application, notwithstanding that the said provision has no applicability to an offence under Section 13 of the Act. He has relied heavily upon the judgement of the Hon'ble Apex Court in "Thwaha Fasal v. Union of India, (2022) 14 SCC 766".

5. *Per contra*, Mr. Qadri, learned Sr.AAG, for the respondent submitted that the investigation is actively ongoing. He clarified that the learned Special Court did not reject the bail application based on the statutory bar under Section 43-D(5) of the Act, but rather on the ground that the investigation was at its infancy. He further contended that substantial progress has since been made in the investigation. Addressing the appellants' claim that they were merely in possession of unbanned literature, the respondent submitted that this assertion is belied by the evidence collected so far. The material on record demonstrates that the appellants were actively instrumental in propagating hatred and disaffection against India and there is possibility that offence under

section 18 of the Act is added. Therefore, given the ongoing nature of the investigation, the appellants are not entitled to bail.

6. **Heard and perused the record including case diary, which after perusal was returned to IO.**

7. The record reveals that on 24th October 2025, police station Baramulla received an information through credible and reliable source that a society operating under the name of Idar-e-Falah-u-Darien, Baramulla, is involved in unlawful activities by installing donation boxes at various locations for collection of funds and there is strong suspicion that collected funds are being diverted to promote secessionist ideology. It has further surfaced that managing body of the said society has affiliation with banned organisations, like, Jamaate-Islami-e-Jammu and Kashmir, and Tehreek-e-Hurriyat Kashmir, which are linked with unlawful and separatist activities for diversion of funds towards unlawful and terror related activities. On receipt of this information, an FIR No.208/2025 was registered at P/S Baramulla under Section 13 of the Act. It came to light that the society is presided over by Imtiyaz Qadir Bhat (appellant no.1) and assisted by its Secretary, namely, Saleem Yousuf Makai (appellant no.2) and others. Notice under Section 179 of Bharatiya Nagarik Suraksha Sanhita (BNSS) was issued to them for their presence at police station. The President along with Secretary produced the documents, which were seized in the instant case and donation boxes installed at various shops in Baramulla Town were also seized and separate seizure memos were prepared. I.O. constituted different teams to raid residential premises of IDF as well as office of Centre for Research and Policy Studies (CRPS). During

raid at residence of appellant no.1, seven books, two mobile phones and a laptop were seized. Likewise, during raid conducted at the residence of respondent no.2, books and mobile phone were recovered and seized. Separate raid was conducted at the office of CRPS where research related files were seized and seizure memo was prepared. A raid was also conducted at the residence of Shabir Ahmad Gojree (office boy) wherefrom one CPU type Frontech colour black was seized and seizure memo was prepared. Another search was conducted at the residence of Ghulam Rasool Pandit, which led to recovery and seizure of Rs.3.50 Lakhs as unaccounted cash. On the perusal of the documents from the residence of appellants, the documents appeared to contain the material suspected to be used for unlawful propagation and indoctrination activities, prejudicial to security and sovereignty of Union Territory.

8. Respondent has stated that there are serious allegations against appellants and it is not that they were found to be in possession of books only but also were instrumental in propagating secessionist ideology and promoting hatred against India.
9. The first ground of challenge to the impugned order is that the learned Special Court erroneously applied the statutory bar under Section 43-D(5) of the Act to reject the bail application. Perusal of the order impugned reveals that learned Special Court in para 34 has mentioned *“On overall consideration of the matter, the Court is satisfied that there exists reasonable grounds for believing that the accusations against the applicants are prima facie made out”*, but that is not the solitary ground leading to rejection of bail application. In fact, the learned Special Court was guided primarily by the nascent stage of the investigation in

rejecting the bail application preferred by the appellants. The learned Special Court explicitly observed that the FSL report regarding the data extracted from the seized mobile phones and other electronic devices was still awaited. Consequently, we are not convinced that the learned Special Court rejected the application solely on the basis of the provisions contained in Section 43-D(5) of the Act. This contention, therefore, stands rejected.

10. Secondly, it was contended that the grounds of arrest were not provided to the appellants. We have perused the application filed by the appellants before the learned Special Court and find that no such ground was ever raised therein. Conversely, the respondent in its status report has categorically stated that the appellants were arrested on 25th November 2025, whereupon arrest memos and separate intimation memos were prepared on the spot, and the grounds of arrest were duly conveyed. Given that this factual assertion is disputed by the respondents, and noting that the learned Special Court had no occasion to examine the issue in the absence of any pleadings to that effect, we refrain from returning any finding on this aspect at this stage. We leave this issue open to be raised before the learned Special Court. Consequently, this contention also stands rejected.

11. The final contention raised by the appellants is that the mere possession of unbanned books cannot attract an offence under Section 13 of the Act. The learned Sr. AAG strongly countered this submission, asserting that the case diary and witness statements contain ample material showing the appellants' active involvement in propagating secessionist ideology and inciting disaffection against the Union of India. As this

submission relates strictly to the merits of the prosecution's case, we deem it inappropriate to return any finding on this aspect at this juncture, leaving it to be adjudicated by the Special Court at an appropriate stage.

12. The investigation is actively ongoing, and the Investigating Officer (IO) is required to file the chargesheet within the statutorily prescribed period, with only a few days remaining for its submission. Once the chargesheet is filed, the appellants shall be at liberty to file a fresh application for bail. At that stage, the learned Special Court will be in a better position to adjudicate upon the contentions of the appellants in light of the material compiled in the chargesheet. The judgement heavily relied upon by learned counsel for appellants, in the case of *Thwaha Fasal v. Union of India* (supra), is not applicable in the instant case as the chargesheet had been filed in the said case and after examining the allegations levelled in the charge sheet, the bail was granted to the accused therein.

13. After careful perusal of the impugned order, we find no ground to warrant our interference. The order passed by the learned Special Court is legally sound and within its jurisdiction. Consequently, this appeal stands disposed of, with liberty to the appellants to move a fresh application for bail before the learned Special Court after the chargesheet is submitted.

(Rajnish Oswal)
Judge

(Arun Palli)
Chief Justice

Srinagar
20.05.2026
Ajaz Ahmad, Secy

Whether approved for reporting? No