HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

(Through Virtual Mode)

Bail App. No. 339/2025
CrlM No. 2303/2025

Reserved on:19.05.2026
Pronounced on: 29.05.2026
Uploaded on: 29.05.2026

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

Kewal Sharma, age 55 years S/O Late Mohan Lal Sharma R/O Dev Nagar Nardi Akhnoor, District, Jammu, Presently lodged in District Jail, Amballa, Jammu

…Petitioner(s)

Through: Mr. Udhay Singh Salaria, Adv. &
Mr. Varun Anand, Advocate

Vs.

1. Union Territory of J&K, th. SSP P/S Ambala Jammu.
2. Incharge/Station House Officer, P/S Akhnoor, Jammu.

…Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG.

CORAM:

HON'BLE MR. JUSTICE RAJNESH OSWAL JUDGE

JUDGMENT

1. The petitioner is facing trial in charge-sheet titled *"UT of J&K v. Kewal Sharma"* arising out of FIR No.109/2014, registered with Police Station Akhnoor under Sections 302, 201 RPC, which is pending before the Court of 2nd Additional Sessions Judge, Jammu, (hereinafter referred to as "*the Trial Court").*

2. The petitioner initially approached the Trial Court for the grant of bail but was unsuccessful; his application was dismissed by way of an

order dated September 17, 2025. Consequently, the petitioner has preferred the instant application for bail, principally on the ground that the protracted delay in trial has violated his fundamental right to a speedy trial.

3. It is submitted that the petitioner was taken into custody on 6th June, 2014, and has ever since been languishing behind bars. It is further contended that the entire case against the petitioner hinges solely upon circumstantial evidence, completely bereft of any eyewitness testimony, and that the prosecution's story is riddled with material inconsistencies. In precise terms, the petitioner submits that he has endured custody for a period exceeding eleven years, during which time the prosecution has been unable to conclude its evidence. Therefore, on account of such inordinate incarceration, it is prayed that the petitioner be enlarged on bail.

4. This bail application was preferred on 24th November, 2025. Notwithstanding the multiple opportunities afforded to the respondents, they have omitted to file any response to the same. By an order dated 12th May, 2026, it was directed that should the respondents fail to submit their response, the matter would be adjudicated upon the strength of the record available. Accordingly, in view of the respondents' default, this Court has proceeded to hear the matter in the absence of their response.

5. Learned counsel for the petitioner vehemently argued that the petitioner deserves bail due to his long incarceration and the respondents' failure to conclude evidence despite multiple opportunities. To demonstrate the respondents' lack of diligence,

learned counsel produced the Trial Court's order dated February 25, 2026. In the said order, the Court expressed strong displeasure with the justification proffered for the absence of prosecution witness Rajinder Khajuria, who was reportedly on VIP duty as per the communication received from the SSP Traffic, Srinagar. Learned Counsel relied upon the Supreme Court judgment in **Vaibhav Singh v. State of Uttar Pradesh**, **2026 LiveLaw (SC) 439.**

6. Per contra, the application is resisted by Mr. Pawan Dev Singh, learned Dy. AG appearing on behalf of the respondents. He argued that the petitioner's custody for a period exceeding eleven years cannot ipso facto operate as a passport to bail, especially when he stands charged for a heinous offence punishable under Section 302 RPC. It is further submitted that in view of the severe quantum of punishment, the mere length of incarceration endured by the petitioner provides no justification for his enlargement on bail.

7. Heard and perused the record of Trial court.

8. The record shows that the petitioner was arrested on June 6, 2014. The challan was presented before the Judicial Magistrate 1st Class, Akhnoor, Jammu, on July 13, 2014, and committed to the Court of the Principal Sessions Judge, Jammu, on the same day. On August 9, 2014, the case was assigned to the Trial Court. Charges under Sections 302 and 201 RPC were framed against the petitioner on November 10, 2014. Out of 35 prosecution witnesses cited, 24 have been examined to date, six have been dropped, and two are deceased, leaving three witnesses to be examined.

9. In fact, the prosecution has consumed a period exceeding eleven years to record the depositions of only twenty-four witnesses. Computed at an average of barely two witnesses per annum, this pace is far too languid to be ignored when viewed in juxtaposition with the submission preferred on behalf of the petitioner that his fundamental right to a speedy trial has been violated.

10. A perusal of the record further discloses that the prosecution seeks to examine mere three witnesses, viz. PWs 21, 26, and 31. By an order dated 15th December, 2025, a peremptory opportunity was granted to the prosecution to produce its remaining evidence, subject to the condition that failure to do so would result in the closure of the prosecution evidence. Notwithstanding this direction, the order dated 25th February, 2026, reveals that the bailable warrant issued against prosecution witness Rajinder Khajuria was returned with a report from the SSP Traffic, Srinagar, asserting that the witness was unavailable owing to VIP duty. The learned Trial Court, in terms of its order dated 25th February, 2026, severely censured the casual approach of the prosecution witnesses in evading court appearance, especially in a matter where the under trial has endured incarceration for a period exceeding a decade.

11. Admittedly, the petitioner has been in custody for nearly twelve years. Clearly, more than a decade has not been enough for the prosecution to conclude its evidence. Consequently, the Trial Court, in its order dated February 25, 2026, expressed strong displeasure at the manner in which the SSP Traffic, Srinagar, sought to excuse the absence of witness Rajinder Khajuria.

12. This Court finds it unnecessary to dissect the evidence led thus far by the prosecution. The protracted incarceration of the petitioner for a period spanning nearly twelve years, coupled with the failure of the prosecution to conclude its evidence despite numerous opportunities, renders this a fit case to hold that the petitioner's fundamental right to a speedy trial has suffered an egregious infringement. The Hon'ble Supreme Court of India in ***Vaibhav Singh v. State of Uttar Pradesh***, reported in 2026 Supreme (SC) 471, after adverting to the fact that the accused had endured incarceration for a period exceeding nine years, made the following observations while enlarging him on bail:-

> "10. It appears that the High Court has not been able to understand the true purport and ratio of the decision of this Court, referred to, in para 8. **All that the High Court ought to have considered is the fact that the petitioner is languishing in jail as an under- trial prisoner past nine years. What more was required for the High Court to consider the plea of the petitioner for bail, keeping his right of speedy trial in mind as enshrined under Article 21 of the Constitution.**
> 11. **We believe we should not wait even for the State to appear. This is a gross case wherein the fundamental right of the petitioner to have a speedy trial as enshrined under Article 21 of the Constitution could be said to have been infringed.**
> 12. **In many of our Judgments and on many occasions, we have said in so many words that howsoever grave the crime may be, but if the accused is denied his right of speedy trial and is languishing in jail for years together and for no fault on his part, he cannot be kept in jail for indefinite period."**
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> (emphasis added)

13. This Court in "***Raman Kumar vs. Union Territory of Jammu and Kashmr through, SHO P/S Chagwal,2025 (1) JKJ[HC] 396",*** had granted the bail to the accused after he had remained in custody for nearly 13 years and while granting bail to the accused this Court observed in paragraphs 10,11 and 13 as under:-

> "10.This is admitted fact that the petitioner has been in custody for the last more than l3 years. **The manner, in which the trial has been conducted in this chargesheet isquite shocking and**

disturbing. Whereas the prosecution has delayed the trial without any justification, the leaned trial court too has miserably failed to ensure that the trial is completed within reasonable time frame. The evidence of the prosecution was closed initially on 15.09.2014. After exhausting almost 80 dates of hearings to conclude its evidence initially, the prosecution took further 2 ½ years to examine two witnesses, though they were permitted to examine three witnesses during the calendar fixed by the trial court vide order dated 22.11.2016. **Though it was ordered that evidence shall be deemed to have been closed in the event of failure of the prosecution to examine three witnesses during the calendar fixed by the trial court, but the trial court granted adjournments in routine manner, oblivious to the timeline fixed by none other than the trial court. The trial court not only stretched beyond the time limit framed for the prosecution to examine those three witnesses not only by couple of months but by 2 ½ years. Thereby adjourning the hearings just on the asking of the prosecution.** The Hon'ble Supreme Court of India has deprecated this practice of adjourning the matters in routine manner and has proceeded to observe in "*Islrwarlal Mali Rathod v. Gopal", (2021) 12 SCC 612*, as under:-

"9. **Today the judiciary and the justice delivery system is facing acute problem of delay which ultimately affects the right of the litigant to access to justice and the speedy trial. Arrears are mounting because of such delay and dilatory tactics and asking repeated adjournments by the advocates and mechanically and in routine manner granted by the courts. It cannot be disputed that due to delay in access to justice and not getting the timely justice it may shaken the trust and confidence of the litigants in the justice delivery system. Many a time, the task of adjournments is used to kill justice. Repeated adjournments break the back of the litigants.The courts are enjoined upon to perform their duties with the object of strengthening the confidence of common man in the institution entrusted with the administration of justice. Any effort which weakens the system and shake the faith of the common man in the justice dispensation has to be discouraged. Therefore the courts shall not grant the adjournments in routine manner and mechanically and shall not be a party to cause for delay in dispensing the justice. The courts have to be diligent and take timely action in order to usher in efficient justice dispensation system and maintain faith in rule of law.**

11. **The expeditious disposal of the criminal case is not only in the public interest, as the guilty may be punished quickly but it would also protect the fundamental right of the accused to speedy trial. This Court has not even an iota of doubt that the prosecution has protracted the trial without any justification and the trial court too has miserably failed to keep a proper check on the prosecution to ensure the protection of the right of the accused to speedy trial as guaranteed under Article 21 of the Constitution of India.** The Hon'ble Supreme Court of India in '*Sheikh Javed Iqbal vs. State of Uttar Pradesh', 2024 INSC 534*, has held as under:

"22. **It is trite law that an accused is entitled to a speedy trial.This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the**

Constitution of India. If the alleged offence is a serious one, it is all the morenecessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.

23. This Bench in a recent decision dated 03.07.2024 in *Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024*, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian 8 i currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489 C IPC. He was in custody as an undertrial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:

"9. **Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.**

23.1. After referring to various other decisions, this Court further observed as follows:

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The overarching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

24. Earlier, in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) Vs. Union of India2, this Court had issued a slue of directions relating to undertrials in jail facing charges under the Narcotic Drugs and Psychotropic Substances Act, 1985 (briefly, the 'NDPS Act' hereinafter) for a period exceeding two years on account of the delay in disposal of the cases lodged against them. In respect of undertrials who were foreigners, this Court directed that the Special Judge should impound their passports besides insisting on a certificate of assurance from the concerned Embassy/High Commission of the country to which the foreigner accused belonged and that such accused should not leave the country and should appear before the Special Court as required.

25. Similarly, in Shaheen Welfare Association Vs. Union of India3, this Court was considering a public interest litigation 2 (1994) 6 SCC 731 3 (1996) 2 SCC 616 15 wherein certain reliefs were sought for undertrial prisoners charged with offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act) languishing in jail for considerable periods of time. This Court observed that while liberty of a citizen must be zealously safeguarded by the courts but, at the same time, in the context of

> stringent laws like the TADA Act, the interest of the victims and the collective interest of the community should also not be lost sight of. While balancing the competing interest, this Court observed that the ultimate justification for deprivation of liberty of an undertrial can only be on account of the accused-undertrial being found guilty of the offences for which he is charged and is being tried. If such a finding is not likely to be arrived at within a reasonable time, some relief(s) becomes necessary. Therefore, a pragmatic approach is required.
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> 13. The embargo for grant of bail in the Code of Criminal procedure in respect of offences punishable with death or life imprisonment, has been provided in public interest so as to ensure that such offenders, who are guilty of commission of offences punishable with death or life imprisonment exclusively do not roam open in the society, thereby endangering the life and liberty of the common citizens but the Article 21 of the Constitution of India also includes in its ambit the right of the accused to speedy trial. While considering the bar for grant of bail in offences punishable with death or life imprisonment, a proper balance is required to be maintained to ensure that the right of the accused to speedy trial is not violated. The jail not bail is a rule in such cases, but where the accused has been in long incarceration for 13 years, the prosecution is guilty of protracting the trial without justifiable reasons and where the trial court has miserably failed to dispose of the chargesheet for a considerable long period without any fault on the part of the accused more particularly when the same has been pending for final arguments for considerable period of time, this Court is of the considered view that the accused deserves concession of bail notwithstanding the embargo contained in Code of Criminal Procedure."
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> (emphasis added)

14. In view of above, this Court is of the considered view that notwithstanding the bar contained in Section 437/497 Cr.P.C/ 480 BNSS, the petitioner deserves to be enlarged on bail. Accordingly, the present petition is allowed, and the petitioner is enlarged on bail subject to following conditions:-

(i) He shall furnish two solvent sureties to the tune of Rs.50,000/- each and personal bond of like amount to the satisfaction of the learned Trial court.

(ii) He shall appear before the Trial court on each and every date of hearing.

(iii) He shall not leave the Union Territory of J&K without prior permission of the learned Trial court.

(iv) He shall not seek unnecessary adjournments.

(v) In the event of violation of any of the conditions mentioned above, the respondents can lay a motion for cancellation of bail of the petitioner before the trial court.

15. The trial court is directed to dispose of the case as expeditiously as possible.

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

17. **Disposed of.**

(RAJNESH OSWAL)
JUDGE

SRINAGAR:
29.05.2026
"Ab. Rashid"

Whether the judgment is reportable: Yes/No.