



Serial No. 2

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(through VC)

Bail App No. 237/2025
CrlM No. 1784/2025

Reserved on: 18.08.2026
Pronounced on: 29.08.2026
Uploaded on: 29.08.2026

Operative part or
Full judgment: **Full**

1. **Irqan Ahmad Dar,**
S/O Abdul Rashid Dar
R/O Syedpora Choorpora,
District Budgam through
Abdul Rashid Dar (Father)
2. **Basit Ali Dar,**
S/O Ali Mohammad Dar,
R/O Fruit Mandi, Parimpora,
Srinagar through
Ali Mohammad Dar (Father)
3. **Irfan Ahmad Najar,**
S/O Abdul Rahsid Najar
R/O Fruit Mandi, Parimpora,
Srinagar through
Sakina (Mother)
4. **Firdous Ahmad Ahanger**
S/O Gulzar Ahmad Ahanger
R/O Rustun, District Budgam through
Tariq Ahmad Ahanger (Brother)

.....Petitioner(s)

Through: Mr. Danish Majid Dar, Adv.

Vs

1. **Union Territory of Jammu & Kashmir**
through Station House Officer,
Police Station Bemina,
Srinagar.
2. **Imran Haroon**
S/O Habib Ullah Haroon,
R/O Boat Colony Bemina,
Srinagar

..... Respondent(s)

Through: Mr. Mohsin S. Qadri, Sr. AAG with
Mr. Haris Khan, Advocate for R-1.
None for R-2.



CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

- 01.** Applicants, through the medium of present bail application moved U/Ss 480 & 483 BNSS seek grant of bail, in a case pending before Fast Track Court (POCSO), Srinagar, (for short 'Trial Court'), arising out of FIR No. 02/2022 registered on 11.02.2022 at P/S Bemina, Srinagar, for the commission of offences punishable under Sections 363, 376-D and 109 IPC and Sections 3/4/16 and 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').
- 02.** Petitioners have pleaded that they are young men of respectable antecedents and deep family roots, accused in the aforesaid case and seek grant of bail on the grounds that they have remained in continuous judicial custody since 15.02.2022; that they have no past criminal antecedents; that there is no credible incriminating evidence and have been suffering of punitive pre-trial confinement; that the Trial Court has rejected their earlier applications, mechanically on the gravity of alleged offences, without appreciating petitioners' prolonged custody, clean antecedents and deep rooted social standing; that the case against petitioners during trial has been gravely weakened; and that petitioners are entitled to be admitted to grant of bail, in view of personal liberty as their fundamental right.
- 03.** Pursuant to notice, objections, on behalf of the official respondent No.1, stand filed, perusal whereof would show that no cogent ground has been urged by the applicants in the bail application; that granting bail to the accused could cause immense psychological distress to the victim, as the victim may fear retribution, social stigma, or intimidation; that release of



accused on bail may directly conflict with the principles enshrined under the POCSO Act, which seeks to protect the victim of sexual crimes from further trauma; that keeping in view the psychological impact and emotional well being of the victim, the accused be denied bail; that the accused are involved in offences of such a severe nature that they fall within the category of 'rarest of rare' cases; that release of accused persons on bail at this juncture would have adverse impact on public safety; that there is sufficient material on record to establish guilt of the accused persons and their involvement in the commission of the offence is 'prima facie' proved; that there are number of material witnesses who are yet to be examined before the court, who may not depose in free and fair manner, in case accused are admitted to bail; there is every likelihood that the accused persons, if enlarged on bail, may tamper with the prosecution evidence and also threaten the prosecution witnesses; offences punishable under Sections 363/376-DA, 109 IPC and Sections 6 & 7 of POCSO Act stand established against the applicants; that the grant of bail in favour of the applicants has been vehemently resisted on the ground that applicants are involved in heinous and non-bailable offences, as such, they cannot seek bail, as a matter of right; that the offences are heinous and carry stringent punishment, which may include imprisonment for the remainder of the life of the accused; that there is every apprehension that the applicants may jump over the bail. Lastly, it is prayed that relief, as prayed for by the applicants in this application, be rejected.

- 04.** Mr. Danish Majid Dar, learned Counsel for the applicants argued that the applicants be admitted to regular bail as after framing of charges, the



main witnesses have already testified, the material exhibits are in the custody of trial court; that the applicants has been in custody since February 2022 for more than four years; that it is settled law that object of bail is to secure attendance at trial and detention before conviction cannot be allowed to operate as punishment unless necessity, not gravity alone, requires it; that POCSO Act does not create a separate statutory embargo on bail; that prolonged custody is a constitutional factor, but must be assessed in totality; that there is a change in circumstances which requires fresh consideration by this court; that the trial of the case is moving forward at snail's pace; that there are glaring inconsistencies in the statement of prosecution witnesses; that the rejection order passed by the learned trial court is bad in the eyes of law; that refusal of bail at this stage would effectively make the petitioners serve an indeterminate part of a sentence before the court has determined guilt. Lastly, it is prayed that the bail application be allowed and the applicants be enlarged on regular bail in the case, on such terms and conditions, which this court may deem fit.

- 05.** Mr. Mohsin S. Qadri, learned Sr. AAG appearing for respondent No.1 while reiterating his written submissions, argued that the bail application filed by the applicants is entirely misconceived, devoid of any merit and is liable to be dismissed; that the learned trial court has rightly rejected the bail applications moved by the applicants before it; that the accused are charged of non-bailable and heinous offences, therefore, they cannot claim bail as a matter of right; that the trial is proceeding smoothly and 13 witnesses, including the victim have already been examined by the prosecution; that the medical and FSL reports have also corroborated the



prosecution version; that the presumption under Section 29 of the POCSO Act stands triggered against the accused; that the applicants/accused have failed to point out any major contradictions in the testimony of the victim or other prosecution witnesses to rebut this presumption and no good ground has been urged that would justify the grant of bail to the accused; that the applicants cannot claim bail, merely on account of delay in trial, especially when the trial is progressing at a good pace; that the applicants, instead of seeking regular bail from this court, at the most can pray for a direction to the trial court to conclude the trial, at the earliest. Lastly, it is prayed that the bail application be rejected.

06. Heard and considered.

07. Facts, as emerge from the pleadings, leading to the filing of the petition, are that on 11.02.2022, the complainant lodged a written report in P/S Bemina to the effect that his daughter aged 15 years left home for purchasing some candies but did not return and despite calling her on phone many times, she did not respond; that in this regard, FIR No. 02/2022 u/s 363 IPC was registered on 11.02.2022, at Bemina Police Station and the investigation was initiated. During investigation, the minor girl was recovered from Tourist Reception Centre (TRC) Srinagar on 12.02.2022, and she was examined with utmost sensitivity, sympathy and care, who deposed that she was kidnapped on 11.02.2022, from JVC Srinagar in a Tata Sumo Vehicle by four persons and taken to Tangmarg forests, where she was subjected by them to gang rape. She reiterated this statement before the learned Magistrate, implicating all the accused/petitioners. The offences were proved against all the accused



during investigation, based on the statements of the prosecution witnesses, supported by medical, digital and scientific evidence. On completion of investigation, challan was presented before the learned trial court, against the applicants on 08.04.2022 for the commission of offences punishable under Sections 363, 376-DA, 109 IPC and Sections 6 and 17 of POCSO Act.

- 08.** The applicants moved trial court seeking release on bail, who vide composite order dated 20.04.2024 rejected the bail applications of the applicants. Aggrieved of rejection of their bail plea by the trial court, the applicants have jointly approached this court by way of filing the instant bail application.
- 09.** It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if release on bail; (v) character, behavior, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. (See: Ram Govind Upadhyay V/S Sudarshan Singh & Ors. reported in **(2002) 3 SCC 598**).
- 10.** The offence of which the applicants are charged are, punishable under Section 363 IPC, with imprisonment for a term which may extend to seven years, for offence U/S 376-DA, imprisonment for the remainder of natural life of accused and with fine; and for offence U/S 6 POCSO Act,



punishment prescribed is not less than ten years, which may extend to imprisonment for life and also fine; and U/S 17 POCSO Act for the same sentence, for abetment in committing the offences U/S 6 of POCSO. Section 30 of POCSO Act, 2012 raises statutory presumption as to culpable mental state, on the part of the accused, to be rebutted during prosecution.

11. Though the petitioners seek grant of bail on the grounds of merits of the case as well, which cannot be gone into, while considering bail plea, lest it affects the prosecution case, however, their main plea is with regard to 'long incarceration', suffered by them since their arrest in the year 2022. The Apex Court in the cases referred and relied upon by the learned counsel for the petitioners K. A. Najeeb **(2021) 3 SCC 713**, Tasleem Ahmad **SLP (Crl.) No.2867/2026** had held that constitutional courts may grant bail, where prolonged incarceration and unlikelihood of an early trial make detention unjustifiable, even in the face of a stringent special statute restriction, however, in Tasleem Ahmad cautioned that time alone should not be a mathematical command.
12. Perusal of the trial court record would show that prosecution has, so far, examined 22 out of the 28 listed prosecution witnesses, which shows that the trial is running at a phenomenal pace. The contention of the learned counsel for the petitioners that during the trial of the case, the prosecution case has been weakened, however, no copy of the statement of any of the witnesses has been placed so as to look into this aspect for limited purpose of disposal of bail application. The heinous offence of gang rape having been committed upon a 15 year old girl by four of the applicants and there being statutory presumption for their culpability



under POCSO Act with the same not being repudiated, it will not in the interest of justice to grant them bail. The petitioners, having regard to the serious offences alleged to have been committed by them and the gravity of the punishment provided thereof, which includes life imprisonment including the remainder period of life, are not found to be entitled to be admitted to bail.

13. Since the trial of the case is almost complete, as only a couple of witnesses are remained to be examined, it will be in the interest of justice that the petitioners face the trial, while in custody as granting of bail in their favour in view of prescribed punishment, shall have a flight risk as the petitioners may evade the trial and may also tamper with the prosecution evidence.
14. Having regard to the nature, seriousness of the offences and gravity of the punishment therefor, of which applicants/accused are charge-sheeted and in view of aforesaid discussion, observations made hereinabove and the preceding analysis, the application is found to be, berefit of any merit and substance and is liable to be rejected.
15. Viewed thus, the bail application is, accordingly, **dismissed**, along with connected application(s).

(M A CHOWDHARY)
JUDGE

JAMMU
29.08.2026
Raj Kumar

Whether the order is speaking?:	Yes
Whether the order is reportable?:	Yes