

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

**Bail App No. 246/2025
CrlM No. 1960/2025**

Reserved On: 7th of September, 2026.
Pronounced On: 14th of September, 2026.
Uploaded On: 14th of September, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

**Union Territory of Jammu & Kashmir,
Through Police Station, Rajpora, Pulwama.**

... Petitioner(s)

Through: -

Mr Jehangir Ahmad Dar, Government Advocate.

V/S

Rayees Ahmad Shah
S/O Mohammad Akber Shah
R/O Rahmoo, Tehsil Rajpora,
District Pulwama.

... Respondent(s)

Through: -

Mr Tariq M. Shah, Advocate.

**CORAM: HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.
(JUDGMENT)**

01. The Petitioner-Union Territory of Jammu & Kashmir, through Police Station Rajpora, Pulwama, has moved this Petition under Section 483 (3) read with Section 528 of the Bharatiya Nyaya Suraksha Sanhita, 2023 [BNSS], seeking quashing of Order dated 11th of July, 2025 passed by the Court of learned Principal Sessions Judge, Pulwama (hereinafter referred to as "Sessions Court"), whereby the accused/ Respondent herein was granted bail in connection with FIR No. 56/2025 registered by Police Station Rajpora, for the commission of offences punishable under Sections 7/9 of the Protection of Children from Sexual Offences Act (for short "the POCSO Act".)

02. Briefly stated, the factual background of the case, as emerges from the perusal of the Order impugned, is that, on 13th of June, 2025, the complainant, namely, Umair Ayoub Bhat S/O Mohammad Ayoub Bhat R/O Shankerpora, Pakherpora, approached the Police authorities of Police Station Rajpora, with a written report, stating therein that his sister-name withheld (hereinafter referred to as “the victim”), aged about 16 years, went to her maternal aunt’s house at Rahmoo; that, on 27th of May, 2025, in the evening, she went to sleep in a room, however, as soon as she started to sleep on bed, the accused/ Respondent herein, who is the uncle (*Mausa*) of the victim, entered into the said room, tried to molest her, grab her forcibly, touched her body which hurt her and also threatened her of dire consequences in case she discloses it to anyone; that, thereafter, the victim managed to escape from the room and, in the meantime, her aunt (*Mausi*) came and the victim narrated the entire story to her aunt, who advised her not to disclose it to anyone as same will disrepute them, as such, the victim did not disclose it to someone else, until she narrated the whole episode to her brother/ complainant.

03. It is further evident that on receipt of the report, Police Station Rajpora registered a case bearing FIR No. 56/2025 for the commission of offences punishable under Sections 7/8 of the POCSO Act and investigation swung into action; that, during the course of investigation, the police inspected the site of occurrence, prepared a site plan, got the victim medically examined and obtained the date of birth of the victim, wherein it emerged that she is a minor, aged about 14 years as on the date of occurrence; that the Investigating Officer also got the statement of the victim recorded under Section 183 of the BNSS before the competent Court of law; that during investigation, it was revealed that the accused is the maternal uncle of the victim and the victim was staying at his house, which corroborated the offense under Section 9 of the POCSO Act and same was, accordingly, added in the case, while as, the offense under Section 8 of the POCSO Act was dropped from the case; that the statements of the witnesses

were recorded; and that, on the basis of evidence available on record, the accused/ Respondent herein was found involved in the commission of offences punishable under Sections 7/9 of the POCSO Act, whereafter, he was arrested.

04. It further transpires that pursuant to his arrest in the case, the accused/ Respondent herein, on 24th of June, 2025, filed an application before the Sessions Court, seeking his release on bail. The Sessions Court, in terms of the Order impugned, allowed the aforesaid application and admitted the accused/ Respondent herein on bail, subject to conditions as detailed out in the impugned Order. It is this Order of the Sessions Court, whereby bail was granted in favour of the accused/ Respondent herein, which has been assailed by the Petitioner-Union Territory of Jammu & Kashmir, through the medium of the instant Petition.

05. The Petitioner-UT is seeking cancellation of bail granted by the Sessions Court in favour of the accused/ Respondent, mainly, on the ground that the evidence collected during the course of investigation is sufficient enough to indict the accused person/ Respondent herein with the commission of heinous offences, however, the learned Sessions Court has not given any weightage to the said aspect of the matter, which was having paramount importance in the case in hand; that it is settled position of law that if the bail order suffers from perversity and irrelevant evidence, the same is liable to be cancelled and, in the instant case, the impugned Order suffers from the *vice* of same, as such, is liable to be set aside and the bail granted to the Respondent is liable to be cancelled; that the impugned Order is bad in law, inasmuch as, it was categorically pleaded before the Sessions Court that the accused/ Respondent herein has committed the offences in a brazen manner, in utter shame to the victim and her family which has shocked the conscience of the civil society and brought humiliation to the victim and his family; and that rape is not merely a physical assault, but it destroys the soul of the victim, besides being a serious blow to the supreme

honor and offends the self-esteem and dignity of the affected person, as such, no bail ought to have been granted to the accused/ Respondent herein.

06. Pursuant to notice having been issued, the Respondent has filed his Objections, stating therein that the Petitioner-UT has failed to show any illegality, perversity or arbitrariness in the impugned Order passed by the Sessions Court; that the learned Court, after considering the relevant circumstances and upon hearing the parties, granted bail to the accused/ Respondent by imposing such conditions as deemed appropriate by the Sessions Court; that there is no allegation that, after his release on bail, the Respondent has violated any of the conditions of bail or has absconded or has interfered with the investigation, threatened or influenced any witness, tampered with evidence or otherwise misused the liberty granted to him. In the end, it has been prayed that the instant Petition be rejected.

07. Heard and considered.

08. The Respondent was granted bail by the Sessions Court in a case related to POCSO Act, wherein he was alleged to have outraged and sexually assaulted the child victim, who had come to his house to stay, as the wife of the accused/ Respondent herein happened to be the maternal aunt of the victim. The accusation against the Respondent is that, after having assaulted the victim, by grabbing her, the Respondent had threatened the victim not to disclose that incident to any person and that the victim, after some time, gathering courage, disclosed the offence committed against her by the Respondent, to her brother, who, accordingly, lodged the written complaint, on the basis of which a formal FIR came to be registered by the concerned police and investigation swung into action.

09. The Respondent, on having been arrested, moved an application to the Court below for admitting him to bail in the case, which was granted in his favour, during investigation of the case itself.

10. It is further seen that, initially, the case was registered vide FIR No. 56/2025 at Police Station Rajpora, for the commission of offences punishable under Sections 7/8 of the POCSO Act, however, after collecting some evidence during investigation, Section 9 of the POCSO Act was invoked, instead of Section 8, as such, the Respondent herein was facing investigation for the commission of offences punishable under Sections 7/9 of the POCSO Act.

11. Section 29 of the POCSO Act raises a presumption of certain offences under the POCSO Act, involving Sections 3, 5, 7 and 9, and Section 30 of the Act also raises a statutory presumption of culpable mental state of the accused, to which he is charged of the commission of offences under the POCSO Act. Though, the aforesaid presumptions are applicable after the accused is charge-sheeted and not for the purpose of bail before framing of charge, as has been argued by the learned Counsel for the Respondent, however, these presumptions show that the sensitivity of the provisions of the POCSO Act are meant to save a child from being subjected to sexual violence.

12. In the instant case, although, the Court below has granted bail to the accused/ Respondent herein having regard to the penalty provided for the offences under Sections 7 and 9 of the POCSO Act, however, it is a case where the child was subjected to sexual violence in a house of her close relatives and, that too, by a close relative. The allegation of threatening was already alleged in the written complaint, whereupon the FIR was lodged. The victim, who had also been examined before a Magistrate, had made incriminating statement against the Respondent, thereby supporting the version narrated in the FIR. In such a situation, the Court below should have considered the bail plea, in light of the perspective as to whether the grant of bail will enhance the course of justice or thwart the same.

13. Keeping in view the totality of the facts and circumstances of the case, coupled with the aim and object of the POCSO Act, the grant of

bail in favour of the Respondent, in the considered opinion of this Court, was too premature to be granted during the investigation of the case, inasmuch as, the Respondent, who being the husband of the maternal aunt of the victim, may have exerted pressure and tried to influence the hapless child not to depose against him during trial. The Court below had not even waited for completion of the investigation in the case before granting of bail. It would have been in the interests of justice had the Court below declined the plea of grant of bail in favour of the Respondent till the victim was examined before the Trial Court, after framing of charge against the Respondent.

14. Having said so, this Court is conscious of the legal scheme with regard to rejection of bail in a non-bailable case at the initial stage, as the cancellation of bail so granted have to be considered and dealt with on different basis. It is trite that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. Interference or an attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused, in any manner, can be the grounds for cancellation of bail. The satisfaction of the Court, on the basis of material placed on record, of the possibility of the accused absconding is yet another reason justifying the cancellation of bail.

15. In the case on hand, grant of bail at an earlier stage during investigation of the case is a circumstance that the Respondent herein, as an accused, may hamper the investigation which was yet to be concluded in the case and also tamper with the Prosecution evidence, so as to screen himself from the crime he allegedly committed.

16. For the foregoing reasons and observations made hereinabove, the impugned Order, whereby bail was granted in favour of the Respondent, having regard to the given facts as narrated hereinabove, is found to be suffering from perversity.

17. Viewed thus, the instant Petition is **allowed**; as a corollary thereto, the impugned Order dated 11th of July, 2025 passed by the Sessions Court is set aside and the bail granted in favour of the Respondent herein shall stand cancelled. The Respondent is directed to surrender before the Station House Officer, Police Station Rajpora, in case the investigation of the case is going on, or, in case the investigation of the case is concluded and charge sheet laid before the Court of competent jurisdiction, the Respondent shall surrender before the said Court within a period of one week from the date of passing of this Judgment, failing which coercive steps shall be taken to procure his custody in the case.

18. Bail App is, thus, **disposed** of on the above terms, along with the connected CrIM.

SRINAGAR

September 14th, 2026

"TAHIR"

(M. A. CHOWDHARY)
JUDGE

i. Whether the Judgment is approved for reporting?

Yes.