Serial No. 9
Suppl. Cause List- III

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(Th. Virtual Mode)**

Bail App No. 300/2024 CrlM No. 617/2025

Pronounced on: 25/09/2026
Uploaded on: 25/09/2026

**Ali Hussain Shah
S/o. Azam Hussain Shah
R/o. Village Shergarhi Tehsil Chassana, District Reasi
Through his father Azam Hussain Shah**

…Applicant/Petitioner.

Through: Mr. K.S. Johal, Ld. Sr. Advocate with
Mr. Supreet R.S. Johal, Advocate

Vs.

**Union Territory of Jammu and Kashmir Through
Senior Superintendent of Police, Crime Branch, Jammu**

...Respondent.

Through: Ms. Monika Kohli, Sr. AAG.

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGMENT

1. Through the medium of the instant petition filed under the provisions of Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS", for short) corresponding to Section 439 of the repealed code of Criminal Procedure, 1973 (hereinafter referred to as the "Code", for short), the petitioner has sought the grant of regular bail in his favour in case FIR No. 19/2024 registered with Police Station, Arnas, Reasi under Sections 409, 420, 467, 468, 471, 477-A & 120-B IPC, subsequently investigated by the Crime Branch, Jammu and having culminated into the filing of a Final Police Report/Challan before

the Court of learned Chief Judicial Magistrate, Reasi (hereinafter referred to as the "Trial Court", for short).

2. The concession of bail has been sought by the petitioner on the grounds *inter alia* that he has been falsely and frivolously implicated in the case FIR when he is innocent and has not committed the alleged offences. That he earlier moved an application before the ld. Trial Court for grant of bail in his favour but the ld. Trial Court, without appreciating the merits of the case and the investigation so far conducted, by way of further investigation dismissed his petition, which prompted him to approach this Court.

The he was appointed by the Government of Jammu & Kashmir as Class IV and was posted at Treasury Office, Mahore. That thereafter he was transferred in Sub Treasury Office, Dharmari, Reasi and since then he is working with full dedication and determination to the entire satisfaction of the department at Sub Treasury Office, Dharmari, Reasi. That being a dutiful public servant, he did his job to the utmost satisfaction of his superiors and till date, except the case in question i.e. FIR bearing No. 19/2024, no other criminal proceeding or any other proceedings are pending against him. The he had an unblemished track record during his service. That Assistant Treasury Officer, Dharmari vide order dated 13-09-2023 distributed the work among the officials including him for the smooth functioning of the treasury.

That the Assistant Treasury Officer Dharmari, Reasi on 03.03.2024 telephonically intimated the District Treasury Officer, Reasi regarding financial irregularities in the Treasury Office, Dharmari. That The District Treasury Officer himself inspected the abovementioned treasury and after scrutinizing the record it was found that fraudulent payments involving significant amount of Government money has been transferred from the treasury office Dharmari into different account numbers.

That on 05-03-2024 the District Treasury Office, Reasi filed an application before the Station House Officer, Police Station, Arnas for registration of FIR regarding financial irregularities and fraudulent payment from the Treasury, Dharmari. Thereafter, the SHO P/S Arnas registered an FIR bearing No.0019 dated 06-03-2024 under section 409 of IPC against the petitioner/accused, Treasury Officer and Accountant for embezzlement of public money from 04-05-2023 to 01-03-2024.

That after the registration of FIR by the Police Station Arnas, Reasi, the PHQ J&K Jammu vide order No.538 of 2024 dated 11-03-2024 transferred the investigation of the above-mentioned FIR from District Police, Reasi to EOW, Crime Branch, Jammu. Subsequently Zonal Head Quarter, EOW, Crime Branch Jammu on 13-03-2024 constituted a Special Investigation Team (SIT) for conducting the in-depth investigation of the above-mentioned FIR. That he was illegally arrested on 13-03-2024 by the District Police, Reasi while he was working in the Sub Treasury Office, Dharmari, Reasi.

That on 12-06-2024, the respondent-Investigating Agency filed a Preliminary Charge sheet before the Duty Magistrate, Reasi as on that day the courts were observing summer vacation across the Jammu region and it is specifically mentioned in the abovementioned preliminary charge sheet that the further investigation of the above-mentioned FIR is still going on and supplementary charge sheet shall be produced before the Court after completion of the same. That the preliminary charge sheet was filed under section 409, 420, 467, 468, 471, 477-A and 120-B of Indian Penal Code. That a preliminary chargesheet was produced by the respondent while he was in the jail and there only the respondent handed over a copy of chargesheet to him.

That he filed an application for grant of statutory bail under section 167(2) on 25-06-2024 before the court of Chief Judicial Magistrate, Reasi wherein response was filed by the respondent before the ld. Trial Court but that application was not allowed. That the embezzled amount was reported to have been transferred into 285 account numbers by him but the fact remains that the amount has been transferred by the co-accused namely Ajeet Kumar, Assistant Treasury Officer and Balbir Singh, Accountant as he being a class-IV Employee had not power and access to transfer the alleged amount.

That the co-accused in the FIR namely Ajeet Kumar the then Assistant Treasury Officer has been granted bail by this Court vide order dated 25.11.2024. That he was arrested on 13.03.2024 and since then he is languishing in jail and his first remand was granted by the Judicial Magistrate 1st Class, Mahore on 14.03.2024. That he had undertaken to abide by all the conditions that may be imposed upon him but the ld. Trial Court did not enlarge him, when the main accused Ajeet Kumar being the then Assistant Treasury Officer had already been granted bail. That his continued detention since 13.03.2024 is violative of his constitutional guarantee under Article 21 of the Constitution of India. That in view of the criminal jurisprudence adopted by our country, an accused is presumed to be innocent until proved guilty at the trial. That he undertakes that he will not misuse the concession of bail by absconding at the trial or by tampering with the prosecution evidence. That he shall abide by any terms and conditions that may be imposed by this Court.

3. The ld. Senior Counsel further submitted that the petitioner is suffering from various ailments and his health has been deteriorating in jail. He contended that the copies of the medical records of the petitioner have also been placed on the record by this Court.

4. The respondent-UT through Crime Branch, Jammu has resisted the bail petition on the grounds that none of the legal rights of the petitioner stand violated as he was arrested on account of his

involvement in heinous offences in case FIR No. 19/2024. That in view of the facts and circumstances enumerated during the course of investigation, the statements of witnesses, bank records, official communication of different corners and Forensic Expert report/opinion, it has been found that accused Ali Hussain Shah, the then MTS of Sub-Treasury Dharmari having domain over credential code AO01 (Auditor level) after hatching criminal conspiracy with his co-accused persons namely Balbir Singh, then Accounts Assistant, Sub-Treasury Dharmari having domain over credential code AS01 (Superintendent level) and Ajeet Kumar, then Assistant Accounts Officer posted as ATO (Assistant Treasury Officer) Sub-Treasury Dharmari having domain over credential code XX01, being custodians of Treasury and having entrustment of the same, with criminal intention, dishonestly prepared fake and forged bills/vouchers of two Major Heads i.e. Pensions -2071 and NPS -8342 w.e.f 04.05.2023 to 01.03.2024 repeatedly in different intervals after falsification of accounts, uploaded the manual forged bills/vouchers and created liability through A001, AS01 and XX01 and misappropriated an amount of Rs. 1,38,17971/- for their wrongful gain and corresponding losses to the UT exchequer by means of cheating and fraud. That the whole of the misappropriated amount of Rs 1,38,17971/- was credited into the two accounts of accused/petitioner-Ali Hussain Shah who, therefrom, transferred the amount to various accounts besides making cash withdrawals. That the ld. Trial Court has already dismissed the bail petition of the petitioner on merits.

That the petitioner has not approached the Court with clean hands and there is suppression as well as concealment of material facts from this Court as such, the bail petition is not maintainable and deserves to be dismissed.

That the petitioner has raised disputed questions of fact which could not be raised in a petition under Section 483 of BNSS.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the petitioner Mr. K.S. Johal, Ld. Senior Advocate while reiterating his stand already taken in the bail petition contended that the petitioner is innocent and has not committed the alleged offences in the light of the statutory definitions of the same.

7. The learned Senior counsel further submitted that without prejudice to the innocence of the petitioner/accused, even if the allegations against him are supposed to be true for arguments sake, he is still entitled to concession of bail in the light of the law on the subject as interpreted by the Hon'ble Apex Court and the other authoritative High Courts of the Country including this Court from time to time. He submitted that none of the offences alleged against the petitioner attract the bar under Section 480 of the BNSS corresponding to Section 437 of the Code. He submitted that even if the offences punishable under Sections 409, 467, 471, 120-B IPC carry a

maximum sentence of life imprisonment, yet the said offences in view of alternate punishments escape the bar under the aforesaid Section of the BNSS/Code. He submitted that the petitioner/accused has been behind the bars and his continued detention despite being innocent tantamounts to his punishment before trial and violates his fundamental right to life and personal liberty guaranteed to him under Article 21 of the Constitution.

8. The learned Senior counsel further contended that it is a settled legal position that bail is a rule and its denial an exception especially in cases which do not carry sentence of death or imprisonment for life in alternate and where there is also nothing on record to show that the accused if admitted to bail will misuse the concession granted in his favour by tampering with the prosecution evidence and absconding at the trial. He submitted that it is well settled that bar under Section 480 BNSS does not apply where the imprisonment for life is provided disjunctive of death sentence. He contended that the petitioner has served the department for a long period and has an unblemished record at his credit. The learned counsel further contended that none of the offences alleged against the accused appears to be prima facie true in view of the definitions of the said offences which require a guilty mind, dishonest intention called as the mens rea. The learned counsel submitted that no accusation or involvement of the petitioner could be ascertained during the preliminary enquiry or the investigation process and he

has been roped in the matter by misuse of the offence under Section 120-B IPC providing for criminal conspiracy. The learned Senior counsel further contended that the object of bail is to ensure the attendance of the accused at the trial by giving him in the hands of sureties. He submitted that the petitioner/ accused who is already under suspension is not having any document within his custody. The learned counsel contended that the gravity of the offences which have not been committed by the petitioner cannot ipso facto justify his detention.

9. The learned counsel further contended that the petitioner earlier approached the learned trial court with the prayer for grant of bail which was denied to him on the grounds of having no legal justification. He further contended that the charge sheet in the case was filed by the Investigating Agency after the stipulated period in connection whereof the petitioner had also prayed for default bail which too was denied to him by the learned trial court. He contended that petitioner is deeply rooted in the society and there is no question of his misusing the concession of bail and that he shall abide by any conditions that may be imposed in case of his bail.

10. The learned Senior counsel in support of his contentions placed reliance on the authoritative judgment of the Hon'ble Supreme Court of India titled **"Sanjay Chandra Vs. Central Bureau of Investigation" (2012) 1 SCC 40"**, and submitted that the Hon'ble Apex Court admitted the appellant/accused to bail who was

allegedly involved in the economic offences of huge magnitude on the ground that the heinousness of the offence is not the sole ground for consideration of a bail application. He contended that the Hon'ble Apex Court in the said case inter alia observed that since the investigation in the case is already over with the presentation of the charge sheet, as such, there is no need of keeping the appellant/accused in custody. He further contended that the Hon'ble Apex Court in the referred case highlighted the object of the bail as to secure the appearance of the accused and the impact of the denial of the bail being tanamounting to violation of the fundamental right to life and personal liberty of an individual.

11. **Per contra**, learned Sr. AAG Ms. Monika Kohli vehemently resisted the bail petition on the grounds that petitioner/accused is involved in serious non-bailable and economic offences touching the interests of the UT, who does not deserve the concession of bail. That the petitioner/accused the then MTS hatched a conspiracy with the co-accused for siphoning the State exchequer to an amount of Rs.1,38,17971/- as a result of generation of false claims through preparation of false documents by finally managing the same as a responsible Govt. Servant. She submitted that the involvement of the petitioner/accused as the main conspirator in the case is evident from the facts and circumstances of the case. She submitted that the case FIR in question bearing No. 19/2024 of Police Station, Arnas came to be registered on the written report of the District Treasury

Officer, Reasi revealing mass financial irregularities as a result of the criminal breach of trust and projecting of false claims/vouchers and during investigation of the case by the economic wing of the Crime Branch, Jammu, the commission of offences punishable under Sections 409, 420, 467, 468, 471, 477 A, 120-B IPC came to be fully established against the petitioner/accused as an active conspirator. She submitted that an amount of Rs.1,38,17971/- was found to have been siphoned from the government exchequer by the petitioner and the co-accused thereby causing a huge wrongful loss to the government exchequer. She submitted that since the whereabouts of the siphoned money at the ultimate end is yet to be ascertained, as such, the Investigating Agency has reserved the liberty under law to conduct the further investigation in the case.

12. Learned Sr. AAG submitted that the petitioner/accused being a responsible Govt. Servant, has failed to discharge his obligations of rendering proper assistance and managing the affairs of the office fairly and honestly. She contended that the Hon'ble Apex Court and various other authoritative High Courts of the Country including this Court has time and again laid down a catena of guiding principles/considerations to be kept in mind while considering the bail applications in serious non-bailable offences especially touching the economy of the State and which inter alia include the gravity of the offences, the circumstances under which the crime is committed, the status and the position of the offender and the

impact of the crime on the State. She submitted that the gravity of the offence is a consideration for rejecting the bail application.

She further submitted that the petitioner/accused being an influential person is likely to misuse the concession, if granted in his favour, by influencing the prosecution witnesses. It was further submitted by the learned State counsel that the trial of the case is at initial stage and the prosecution evidence is yet to be recorded, as such, the release of the petitioner/accused at this stage is likely to have an adverse impact on the trial of the case. That the release of the petitioner/accused will give a bad signal and will encourage the likeminded government servants for commission of such economic offences to the prejudice of the State.

13. The learned Senior Additional Advocate General in support of her contentions placed reliance on the authoritative judgment of this Court passed in bail application No. 131/2024 titled **"Mohd Isaq Bhat Vs. Central Bureau of Investigation"** decided on 03.07.2024 in which this Court denied bail to the petitioner/accused who had been caught red handed while accepting a bribe of Rs.18000/- when charge sheet had already been filed against him. She contended that this Court in the referred case observed that though the investigation in the case has been completed and charge sheet is filed, yet if the accused is released prematurely there is a real danger of his attempting to win over the complainant, shadow witnesses and others who are witnesses to the seizure memo etc.

The learned counsel submitted that it was further observed by this Court in the referred case that an offence under the provisions of the Prevention of Corruption Act cannot be dealt with the same yardstick that may be applied in case of offences affecting human body or other categories of offences. That it must be borne in mind that offence against a human body may be a crime of passion, may at times result in one man taking the life of another in a fit of anger arising at the moment without premeditation and without any preparation, but offences of cheating, corruption and other white color offences are impossible to be committed without serious premeditation. That such type of offences committed by the accused require a great deal of planning, arrangements and other associations with co-accused persons. The learned counsel submitted that on the analogy of the law laid down in the referred case coupled with the circumstances under which the crime has been committed by a responsible official dealing with the public money, the bail application needs to be rejected.

14. Before proceeding ahead towards the disposal of the instant petition, it is appropriate to give a brief resume of the facts of the case relevant for disposal of the matter.

15. A written complaint was lodged by the District Treasury Officer, Reasi, Sh. Qamar Rehman with Police Station, Arnas on 06.03.2024 bearing No. DTR/2023-24/1080-83 dated 05.03.2024 along with an enquiry report of present petitioner/accused bearing reference No.

DATJ/TRY/2023-24/12067-12069 dated 04.03.2024, to the effect that upon being informed by the petitioner i.e. Treasury Officer, Dharmari on phone on 03.03.2024 regarding financial irregularity noticed by him in his treasury, he also inspected the said treasury and after scrutinizing the record found that fraudulent payments involving significant amounts of government money have been made from the said Treasury Office, Dharmari to the accounts of accused Mr. Ali Hussain Shah, MTS of the said treasury on various occasions mainly involving two major heads 8342-NPS and 2071-Pensionary charges/Pensionary benefits. That upon enquiry from the co-accused ATO as to how the fraudulent payments have been made/processed from his treasury under his control, he informed that while en-cashing the bills on 02.03.2024 against payments made by him on 01.03.2024, it was found that an amount of Rs.9,95,887/- has been made against which there was no voucher available. That upon scrutiny of the record, he found that said payment was made through a separate file of the said amount in addition to the main payment file of that day. That while tracing the amount, it was found that said fraudulently drawn amount was credited to the account of accused Mr. Ali Hussain Shah, MTS of the said treasury, Dharmari on 01.03.2024. That it was also found on further scrutiny of the record that such further amounts have been processed on various occasions in the past also involving large sums of government money. That it was also found that accused

Mr. Ali Hussain Shah, MTS of the said treasury was dealing with compiling the daily liabilities of the treasury under different heads and processing the payments from the past quite some time by utilizing the logging in credential of AO01, AS01 and XX01 of the treasury through VPN application. That the petitioner/treasury officer also told him that due to network problems in the treasury leading to the non-functioning of the Satellite lease line connection, the treasury payments used to be done by connecting with the mobile phone VPN network. That the accused MTS, Ali Hussain Shah while using the VPN network secured the fraudulent payments into his personal account Nos. 028104012000015 and 0105040120000002. That the said official/accused also exaggerated the liability figures of the treasury beyond actual vouchers. That from the statements of the treasury officer Dharmari (petitioner/accused), it prima facie appears that co-accused-Treasury Officer while authorizing the said MTS official to book the daily liability of the treasury and make payments on his behalf, did not cross check the figures against actual vouchers and also while forwarding the monthly accounts to the office of the Accountant General, J&K, Jammu as a result of which the said accused Ali Hussain Shah, MTS managed to do the things in his own way.

That the enquiry report enclosing the FIR also mentioned the details of the fraudulent payments made/processed from the concerned treasury office, Dharmari which came to be traced during the then ongoing scrutiny of the record by the complainant i.e. DTO, Reasi. The enquiry report enclosing the FIR lodged by the complainant/DTO Reasi also mentioned that it is evident from the scrutiny made by him that the MTS official Ali Hussain Shah (accused) manipulated the treasury system for his own benefit as the whole amount has been credited to his own saving accounts mentioned in the enquiry report. That moreover the said MTS official is absent from the duties since 02.03.2024 and his whereabouts are not known.

That on the receipt of the said report, case FIR No. 19/2024 was registered by the Police Station, Arnas under Section 409 IPC against the accused Ali Hussain Shah and investigation started which was subsequently transferred to the economic offences Wing of the Crime Branch, Jammu vide PHQ, Jammu Order No. 538 of 2024 dated 11.03.2024. During the investigation of the case, the petitioner along with co-accused were arrested on 14.03.2024. That during investigation of the case searches were conducted at the house of the accused Ali Hussain Shah but no incriminating documents, cash, check books, gadgets, documents pertaining to moveable/immovable properties were found/recovered. That during the investigation the commission of offences punishable under Sections 409, 420, 467, 468, 471, 477-A & 120-B IPC were found established against the petitioner and the co-accused upon the ascertainment of the fact that accused Ali Hussain Shah then MTS of the treasury concerned having taken over the credential Code AO01 (Auditory level) after hatching conspiracy with his co-accused persons, namely, Balbir Singh, the then Accounts Assistant Sub Treasury having taken over credential Code AS01 (Superintendent Level) and the co-accused, namely, Ajeet Kumar, the then Assistant Accounts Officer posted as ATO (Assistant Treasury Officer) of Sub Treasury Dharmari having taken over credential Code XX01 being custodian of the treasury and having entrustment of the same with criminal intention, dishonestly prepared fake and forged bills/vouchers of two major heads i.e. Pension 2071 and NPS-8342 w.e.f. 04.05.2023 to 01.03.2024 repeatedly at different intervals after falsification of accounts raised the manual forged bills/vouchers and created liability thereby, misappropriating an amount of Rs.1,38,17971/- for their wrongful gain and the corresponding losses to the UT exchequer by means of cheating and fraud. That misappropriated amount has been subsequently credited to account numbers of different bank branches of different beneficiaries all over the India and the involvement of other persons cannot be ruled out in connection whereof the further investigation of the case is kept open under Section 173 (8) of the Code.

16. The preliminary charge sheet against the petitioner and the other co-accused is reported to be pending disposal before the learned trial court.

17. Keeping in view the perusal of the application, the objections of the Respondent-agency and the consideration of the rival arguments advanced on both the sides in the light of the law on the subject, this Court is of the opinion, that it may meet the ends of justice in case the petitioner/accused is admitted to bail subject to some reasonable terms and conditions.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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".

24. 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: -

> "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."

25. 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.

26. 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 out rightly 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 Maharastra AIR 2011 SC 312 and Sushila Aggarwal and Ors. Vs. State (NCT of Delhi) and 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.

27. This Court is conscious of the legal position that some of the offences alleged against the petitioner i.e. 409, 467 & 471 IPC carry a maximum sentence of life imprisonment owing to which fact attraction or otherwise of the bar under Section 480 of BNSS, corresponding to Section 437 of the Code is to be addressed to. As hereinbefore mentioned, the bar imposed under Section 480 of BNSS is not confined to the cases where the imprisonment for life is provided as an alternative punishment disjunctive of death penalty. In these offences, even the sentence of life imprisonment is not absolute but as a maximum alternative.

28. In the case in hand, the petitioner is alleged to have committed the offences punishable under Sections 409, 468, 471 & 477A IPC

under a conspiracy. He is a responsible official being posted as then MTS Treasury and is alleged to have unmindfully and dishonestly skipped all his official obligations so much so that he discharged the role as main accused.

29. It was *inter alia* submitted by the learned Senior Counsel for the petitioner during his arguments that the co-accused have already been released on bail including the main accused Ajeet Kumar the then Assistant Treasury Officer Dharmari Arnas, Reasi. He also contended that since the investigation in the case is already complete with the presentation of the final charge sheet, being at the advanced stage of trial, there is no apprehension of the misuse of concession by the petitioner.

30. In the opinion of the Court, the guiding factors/underlying principles that have been from time to time evolved by the Hon'ble Apex Court and various High Courts of our Country including this Court for consideration of a bail application jointly or severally do not justify the denial of bail to the petitioner/accused in the backdrop of the facto legal scenario of the case.

31. This Court in its opinion is fully fortified with the authoritative law laid down by the Hon'ble Apex Court cited as **"Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40"** also relied upon by the learned counsel for the petitioner, Mr. K.S. Johal, Senior Advocate in which the bail was granted to the appellant who was also involved in economic offences. It is profitable to

reproduce the relevant paras 24 and 25 of the judgment for ready reference: -

> “24. In the instant case, as we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating of the scales of justice.”
>
> “25. The provisions of Cr.P.C. confer discretionary jurisdiction on criminal courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.”

32. In **“Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280”**, the Hon’ble Apex Court has laid down the special factors for taking into consideration while exercising the bail jurisdiction and the relevant para 8 of the said judgment is reproduced as hereunder for ready reference: -

> “8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

33. The observations of the Hon’ble Apex Court laid down in **“State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21”** at para 18 of the judgment also deserve a needful mention:

"18. It is well settled that the matters to be considered in 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 charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State (Delhi Admn.]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

34. The Hon'ble Apex Court in Sanjay Chandra's case cited supra has inter alia held at para 40 of the judgment, "the grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court,

whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon, whenever his presence is required."

35. A criminal court while considering a bail application in case of non-bailable offences attracting no immediate statutory bar and in respect of which the court is vested with the discretion shall consider the relevant factors/guiding principles having been passed by the authoritative courts from time to time and hereinbefore mentioned in a justice oriented and realistic way without being influenced by the gravity of allegations.

36. As hereinbefore mentioned, the Hon'ble Apex Court in its judgments cited as **"Siddharam Satlingappa Mhetre Vs. State of Maharastra decided on 02/12/2010, AIR 2011 SC 312 and Sushila Aggarwal and others vs. State (NCT of Delhi) and Another 2020 SC online 98"** decided on January 29, 2020 by a larger bench, has interpreted law even on the subject of anticipatory bail with a very wide outlook and while interpreting the concept of liberty guaranteed under Article 21 of the Constitution of our country in a flexible and broader sense. It has been inter alia observed by the Hon'ble Apex Court in the aforesaid judgments that the exact role of the accused must be properly comprehended before arrest is made. "The inner urge for freedom is a natural phenomenon of every human being. Respect for life and property is not merely a norm or a policy of the state but an essential

requirement of any civilized society. Just as the liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order."

37. The authoritative law relied upon by the learned Sr. AAG in support of her arguments in case titled **"Mohd. Ishaq Bhat V. CBI"**, decided on 03.07.2024 has been passed in the own facts and circumstances of the case in which the direct allegations were against the petitioner/accused who allegedly was apprehended by the CBI red handed in a trap accepting a bribe of Rs.18000/-.

38. I have gone through the order dated 02.12.2024 passed by the Ld. Trial Court on the earlier application bearing File No. 704/2024 of the petitioner.

39. This Court is of the opinion that a petition in terms of Section 483 BNSS corresponding to Section 439 of the repealed Code shall normally be filed, if needed, by either side as a successive one after the disposal of the first application by a competent court. Although there is no bar under the aforesaid provisions of law contained under Section 483 BNSS in directly approaching this Court yet fairness requires that the competent court of first level should not be bypassed. Practice of directly approaching a High Court by invoking the provisions of Section 483 BNSS is likely to unnecessarily burden this Court with such matters which can in the first instance be addressed under law by the courts below. The competent jurisdictional courts below otherwise in most of the

cases use to be already informed of the matter being either the committal/remand Magistrates or the trial courts. It is being observed that generally the advocates practising in the High Courts resort to such practice of directly approaching this Court for their own convenience being unmindful of the petitioner's losing one forum. This Court is also of the opinion that power of a High Court and of the court of Sessions under Section 483 BNSS is not unlimited but the restrictions figuring under the provisions of the Section 480 BNSS corresponding to Section 437 of the repealed Code are deemed to be imported in the former (Section 483 BNSS). A compelling justifiable ground or a circumstance should be made out for directly approaching the High Court or a court of Sessions under Section 483 BNSS for grant or cancellation of bail.

40. In the backdrop of the aforementioned discussion, the petition is allowed and the petitioner/accused is admitted to bail in the case FIR No. 19/2024 of Police Station Arnas, Reasi under Sections 409, 420, 467, 468, 471, 477-A & 120-B IPC subject to his furnishing of surety and personal bonds to the tune of Rs.1 lac each respectively to the satisfaction of learned Registrar Judicial (Jammu Wing) of this Court and the Superintendent of the Jail concerned.

This order shall, however, be subject to the following conditions:

1) The petitioner/accused shall not directly or indirectly make any inducement, threat or promise to any prosecution witnesses so as to dissuade them from disclosing the real facts to the learned trial

court or to the Investigating Officer in view of the reported further investigation.

2) The petitioner shall make available himself to the Investigating Officer of the case if so, directed during the reported further investigation of the case, if any.

3) The petitioner shall remain punctual at the trial of the case.

4) The petitioner shall not leave the limits of the UT of Jammu and Kashmir without prior permission of the learned trial court.

5) The surety bond of Rs. 1 lac should be furnished on behalf of the petitioner/accused by two persons amongst his relatives in equal amounts.

41. It is very needful to mention that nothing in this order shall be construed as any prejudging of or interference with the merits of the case.

42. In case the requisite surety/bail bonds are furnished and attested to the satisfaction of the learned Registrar Judicial (Jammu Wing) of this Court, the Registry (Jammu Wing) shall issue an order directing the Superintendent Jail concerned, where the petitioner is presently lodged, for his release **in the instant case** subject to his furnishing the requisite personal bond to the satisfaction of the said Superintendent Jail concerned.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR
25.09.2026
Shahid Manzoor

Whether the order is speaking	Yes
Whether approved for reporting	Yes