

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

**CrlA (D) No. 12/2025 c/w
CrlA (D) No. 13/2025
CrlA (D) No. 15/2025
CrlA (D) No. 18/2025**

Mohammad Aslam War

... Appellant(s)

**Through: -
Ms Asifa Padroo, Advocate.**

**V/s
Union Territory of J&K through Police Station Yaripora**

... Respondent(s)

**Through: -
Mr Alla-ud-Din Ganai, AAG with
Ms Shaila Shameem, Assisting Counsel.**

CORAM:

**Hon'ble Ms Justice Sindhu Sharma, Judge
Hon'ble Mr Justice Shahzad Azeem, Judge**

**(ORDER)
29.08.2025**

CrlM No. 213/2025 in CrlA (D) No. 12/2025:

01. The Applicant-Appellant, namely, Mohammad Aslam War, was sent for trial in FIR No. 21/2021 of Police Station Yaripora, for the commission of offences punishable under Sections 8/20 and 8/22 read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act [NDPS Act], who, on culmination of trial, suffered conviction alongwith co-accused and sentenced to undergo rigorous imprisonment of 05 years each with fine of Rs. 20,000/- each for offence under Section 8/20 (ii) (B) and in default, the convicts were ordered to further undergo rigorous imprisonment of 01 year. Further, for commission of offence under Section 8/22 (c), all the convicts were sentenced to rigorous imprisonment of 12 years each with

fine of Rs. 1.00 lac each and in default, the convicts were ordered to undergo rigorous imprisonment of 02 years each. All the sentences were ordered to run concurrently.

02. Against the aforesaid Judgment of Conviction and Order of Sentence dated 23rd of January, 2025 and 8th of February, 2025, respectively, passed by the trial Court, the Applicant/ Appellant preferred conviction appeal before this Court, being CrIA (D) No. 12/2025. Alongside the appeal, the Applicant-Appellant has also moved an application for suspension of sentence and admitting him to interim bail.

03. Although, in the application, it has been specifically pleaded that the Applicant is behind bars for more than 04 years and also that the accused has fair chances of acquittal in view of weak evidence available on record, however, when this application was taken up for hearing, while restricting her arguments, Ms Asifa Padroo, the learned Counsel appearing for the Applicant-Appellant submitted that, at this stage, she is only pressing this application to the extent of seeking short bail in favour of the Applicant-Appellant purely on medical grounds in view of his deteriorating health condition.

04. Accordingly, keeping in view the limited prayer made by the learned Counsel for the Applicant regarding grant of short term bail on medical grounds, we have examined the medical record available on the file relating to the ailment of the Applicant, so as to find out as to whether there exists any medical emergency of such nature which requires specialized treatment which is not available in the Jail where he is presently lodged and also as to whether if he is not provided medical treatment outside as recommended, he shall run the risk of his life.

05. The main limb of argument of the learned Counsel for the Applicant is that from the medical reports submitted by the Respondent-UT pursuant to the directions passed by this Court, it is more than conspicuous

that the Applicant is in dire need of specialized treatment which is not available in the Central Jail, Srinagar, as such, if the Applicant is not admitted to short term interim bail enabling him to get specialized treatment, there is every likelihood that same may endanger the life of the Applicant-Appellant.

06. In support of her limited submissions, the learned Counsel for the Applicant-Appellant has drawn our attention to paragraph No.5 of the application and canvassed at Bar that a specific ground has been pleaded in the application with regard to the deteriorating health condition of the Applicant-Appellant which reads, thus:

“5. That the accused is a chronic asthma patient and had suffered a severe deterioration in health a few days prior, requiring urgent medical attention. He was admitted to the Chest Disease Hospital, where he was placed on oxygen support and advised continuous medical treatment. The attending doctors have recommended that the accused be kept in isolation and away from others due to his medical condition. At present, the accused remains on prescribed medication and requires ongoing medical supervision. In view of his health condition and the necessity of specialized care, it is humbly prayed that this Hon’ble Court be pleased to grant interim bail to the accused on medical grounds in the interest of justice.”

07. On the other hand, despite the Respondent-UT having been given ample opportunities to file Objection to the application, but, till date, same has not been filed. However, Mr Alla-ud-Din Ganai, learned Additional Advocate General, appearing for the Respondent-UT, vehemently argued that the Applicant-Appellant has been convicted after full-fledged trial for commission of heinous offences having far-reaching consequences, therefore, no leniency can be shown to him on the ground as pleaded by the Applicant-Appellant.

08. The learned Additional Advocate General further submits that the rigors of Section 37 of the NDPS Act apply with full force to this case, therefore, once the Applicant-Appellant stands convicted, there remains no

doubt that unless he crosses the hurdle by making out a case on merits, concession of bail, in no case, can be granted in his favour.

09. Heard, considered and perused the record.

10. As we have pointed out at the outset that when the matter is taken up for consideration, the learned Counsel appearing for the Applicant-Appellant restricted her arguments to the grant of short term interim bail only on medical grounds in view of the medical report submitted by the Jail authorities, in compliance to the orders passed by the Court.

11. In this view of the matter, we have examined the health Status Reports, so to find out as to whether the medical emergency, as projected by the learned Counsel for the Applicant-Appellant, is of such nature that if immediate medical treatment is not provided to the Applicant-Appellant, same may endanger his life.

12. Perusal of the file reveals that there are two health Status Reports available on record, submitted by the Senior Superintendent, Central Jail, Srinagar dated 17th of April, 2025 and 21st of August, 2025, respectively.

13. In the health Status Report dated 17th of April, 2025, while setting out the medical history of the Applicant-Appellant, it has been stated that the inmate (Applicant-Appellant herein) has no comorbid condition as such and is a known case of Chronic Obstructive Airway Disease (COPD), suffering type-2 respiratory failure, renal dysfunction, Hepatitis (HCV) positive, right bundle branch block (RBBB). It is further reported that the patient is under intermittent support of Non-Invasive Ventilation Bi-Level Positive Airway Pressure (NIV-BIPAP) and life time oxygen therapy *via* nasal prong for 18 hours per day. The Medical Report further reveals that the lodgment of the said inmate (Applicant-Appellant herein) to Central Jail, Srinagar was denied due to unstable clinical status of the patient and

was sent to Chest Disease Hospital, Dalgate, Srinagar for pulmonological consultation. In the penultimate paragraph of the Medical Report dated 17th of April, 2025, the Senior Medical Officer, Central Jail, Srinagar has opined, thus:

“On 24/02/2025, the said Inmate was referred to Govt. Superspeciality Shireen Bagh, SMHS Hospital Srinagar. He was examined by Consultant Gastroenterologist who after assessment advised Fibroscan, EGD and HCV-RNA Quantitative Genotype. The report of Fibroscan suggests Mild Liver Fibrosis, HCV-RNA and further planned for EGD. Bipap/Oxygen Therapy needs consistent monitoring and possible adjustment to their treatment plans, which may not be feasible in a detention setting and potential risk associated with their continued detention. The complexity of the patient health status and limited access to prison hospital healthcare and infrastructure presents significant challenges, affecting health care system.”

14. Similarly, in compliance to Order dated 11th of August, 2025, the latest health Status Report dated 21st of August, 2025 came to be filed by the Respondent-UT on the basis of medical examination of the Applicant-Appellant by Consultant, Pulmonologist, which assumes importance and, therefore, the relevant portion thereof reads, thus:

“Since, last two days the said inmate developed exacerbation of respiratory symptoms for that he was initially examined by jail Senior Medical Officer and symptomatic treatment was given. But as he did not respond to the given treatment, he was escorted to Govt. Chest Disease Hospital, Srinagar on 20/08/2025, where he was examined by Consultant, Pulmonologist, who advised base line investigations, Chest Xray, Electrocardiography and ABG, which revealed features of Acute on Chronic type-2 respiratory failure. He was advised long term oxygen therapy at the rate of 1-2 litres/ min, intermittent NIV (BiPAP) apparatus and medications. Further consultations of Cardiologist and Gastroenterologist was advised which is planned for 23/08/2025 respectively.

The patient is on BiPAP/ Oxygen therapy needs consistent monitoring and possible adjustment to their treatment plans, which may not be feasible in a detention setting and there is a potential risk of re-infection/ deterioration of health status with their continued detention.

The complexity of the patient health status and limited intensive care facility/ infrastructure in prison hospital presents significant challenges in treatment and care for such compromised patient.”

15. It is apt to mention here that both the health Status Reports, as mentioned above, came to be submitted after health check-up of the Applicant-Appellant pursuant to the orders passed by this Court which, in unequivocal terms, depicts the pathetic health condition of the Applicant-Appellant and given the ailment, it has been specifically pointed out that there is limited intensive care facility/ infrastructure in prison hospital which presents significant challenges in the treatment and care for such compromised patient.

16. Since, the health Status Reports of the Applicant-Appellant available on record unerringly point towards the deteriorating health condition of the Applicant-Appellant, coupled with the limited infrastructural health care system/ facility in prison, therefore, we are of the considered view that the present health condition of the Applicant-Appellant is not suitable for his further incarceration in jail which may potentially endanger his life.

17. Given the peculiarity of the case and the health Status available on record, we hasten to add that right of health is a fundamental aspect of right to life under Article 21 of the Constitution of India and, thus, the constitutional Courts, being guardians of fundamental rights, are required to consider the health condition of the individuals when deciding liberty matters and, in this regard, State is equally enjoined to providing necessary medical care to prisoners and failure to do so can lead to violation of constitutional rights.

18. In view of the medical opinion on record, it is evident that with the ailments which the Applicant is suffering from, it may not be safe for the Applicant to keep him in jail. Despite his admission in Chest Disease

Hospital, Dalgate, Srinagar, the medical condition of the Applicant reportedly has not improved and rather worsened. As opined by the Doctor concerned, the Applicant needs regular treatment under personal and specialized care, which personal care may not be possible in the environment of jail, as has been specifically reported by the jail authorities.

19. We are not oblivious of the fact that the Applicant has been convicted and sentenced for a heinous crime and rigors of Section 37 of the NDPS Act are also applicable. However, given the medical emergency of the Applicant, without going into the merits of the case, gravity of the offences and severity of the punishment, the plea for grant of interim bail on medical grounds is being considered in view of the ailment which the Applicant is suffering from.

20. In the wake of this constitutional guarantee, when we consider the submissions made by the learned Counsels for the parties conjointly with the infrastructural constraints pleaded by the Jail authorities, we have no doubt in our mind that the mandate envisaged under Article 21 of the Constitution needs to be upheld at any cost as there is sufficient material on record compelling us to exercise discretion in favour of the Applicant-Appellant, who is in dire need of advanced treatment in the hospital as same is not available in jail. Since, we are not considering this application on merits and are only considering it on purely medical and humanitarian grounds, therefore, pending the plea of the Applicant-Appellant for suspension of sentence and grant of bail, the Applicant-Appellant is admitted to short term interim bail on medical ground for a period of two months, i.e., upto 31st of October, 2025, subject to following conditions:

- i. The Applicant/ Appellant shall furnish surety and personal bonds to the tune of Rs.1.00 lac each;
- ii. The requisite surety bond to be furnished to the satisfaction of the learned Registrar Judicial of this

Court and attested by him, whereafter, a formal release order shall be issued directing the release of the Applicant/ Appellant from his custody in this matter, subject to his furnishing of personal bond to the satisfaction of the Superintendent Jail concerned;

- iii. The Applicant/ Appellant shall not repeat the commission of crime;
- iv. The Applicant/ Appellant shall remain punctual at the proceedings of the main appeal;
- v. The Applicant/ Appellant shall not leave the territorial limits of the Kashmir Division of the Union Territory of Jammu & Kashmir without permission of the Station House Officer (SHO) of his local Police Station; and
- vi. Upon expiry of aforesaid two months from the date of release of the Applicant-Appellant from Jail viz. 1st of November, 2025, the Applicant-Appellant shall surrender himself before the Jail Superintendent concerned.

21. Let this application come up for consideration on 6th of November, 2025, by which time, the Respondent-UT shall submit Objections to the application with a copy in advance to the other side.

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22. Let all these appeals come up for consideration on 6th of November, 2025.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

SRINAGAR
August 29th, 2025
"TAHIR"