



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

CrlA (D) No. 90/2024

Reserved On: 22nd of September, 2025.
Pronounced On: 26th of September, 2025.

Feroz Ahmad Dar, Age: 32 Years
S/O Bashir Ahmad Dar
R/O Doabghah, Sopore
Through his father, Bashir Ahmad Dar.

... Appellant(s)

Through: -

Mr S. T. Hussain, Senior Advocate with
Ms Nida Nazir, Advocate.

V/s

- 1. Union Territory of Jammu & Kashmir**
Through Police Station Rainawari.
- 2. Superintendent, Central Jail, Srinagar.**

... Respondent(s)

Through: -

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with
Ms Maha Majeed, Assisting Counsel.

CORAM:

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

(JUDGMENT)

Shahzad Azeem-J:

01. This appeal under Section 21 of the National Investigation Agency Act, 2008 [for short “the NIA Act”] is filed against the Order dated December 09, 2024 passed by the Court of learned Additional Sessions Judge/ Special Judge Designated under NIA Act, Srinagar [“the Special Court”], whereby the prayer of the Appellant for two months’ short term bail on humanitarian grounds came to be dismissed.

02. The Appellant has challenged the impugned Order mainly on the ground that the Special Court has neither taken into consideration the evidence nor given reasons, inasmuch as the impugned Order came to be passed by a non-speaking Order.



03. According to Appellant, the following questions of law are involved in this appeal:

- i. That the Authority did not apply its mind to the facts of the case, therefore, the sanction granted is not in conformity with the Statute;
- ii. That the Special Court did not discuss the evidence and the prosecution witnesses, so as to indicate as to whether or not *prima facie* case is made out;
- iii. That for the offences under the RPC and Unlawful Activities (Prevention) Act [“UA (P) Act”], no joint trial can be held; and
- iv. That the Appellant is behind the bars for last five years, therefore, bar of Section 43-D of the UA (P) Act is not applicable and, thus Appellant is entitled to bail under Article 21 of the Constitution of India.

04. On the other hand, the Respondents have filed the Objections and have opposed the appeal on the ground that the Appellant, while being lodged in Central Jail, Srinagar, in a criminal case, resorted to terrorist related activities and, in this regard, on April 04, 2019, the police of Police Station, Rainawari received an information that the jail inmates of Central Jail, Srinagar created huge disruption and disorder inside the jail premises and allegedly resorted to setting the barracks on fire and blurting out anti-national slogans and pelted stones on the jail staff/ employees, etc.

05. This information led to the registration of a case, being FIR No. 19/2019, under Sections 336 and 436 RPC read with Section 13 of the UA(P) Act and investigation taken up.

06. During the course of investigation, it has surfaced that in pursuance of a well-planned conspiracy among the jail inmates, they raised anti-national slogans, damaged Government property and used jail LPG gas



cylinders to make explosions and arson. The Appellant, along with other jail inmates, by use of explosions, damaged the wall of the jail premises, so that they may escape from jail. Allegedly, the Appellant and co-accused have made attempts to commit murder of jail officials and other personnel of armed forces. Therefore, they formed a terrorist gang inside the Central Jail, Srinagar, with the main objective of engaging in unlawful and terrorist related activities.

07. Finally, the appeal has been opposed on the ground that the Appellant has indulged in terrorist related activities and there is sufficient material suggestive of the fact that the Appellant had indulged in terrorist related activities, therefore, keeping in view his past history and antecedents, he does not deserve the concession of bail at this stage.

08. Heard and considered. Perused the trial Court record.

09. At the outset, we place on record that in a democratic country like ours, governed by the rule of law, the personal liberty of an individual is of utmost importance, however, the legal fetters, at times, become necessary keeping in view the larger interest of the society, etc. Therefore, while dealing with liberty matters, the Court has to take into consideration broader parameters, so as to balance the individual liberty *vis-à-vis* security, sovereignty and interest of the State.

10. Now, coming to the case on hand, perusal of the impugned Order shows that the Appellant has filed an application before the Special Court with a prayer for short term interim bail for two months on humanitarian grounds. This prayer appears to have been made on account of the ailment of his mother and that the Appellant is the only male member in his family, who can only facilitate a medical examination for her mother from a Specialist, which would help to save the precious life of his mother, because she is suffering from acute depression and suicidal thoughts,



coupled with the tendency to kill herself. In support of his prayer, the Appellant has also made mention of his educational qualification.

11. Perusal of trial Court record shows that, while the Appellant was already lodged in Jail in connection with FIR No. 48/2013 under Section 302 RPC read with Section 7/25 Arms Act of Police Station, Sopore, he came to be arraigned in FIR No. 19/2019 under Sections 147, 148, 149, 336, 427, 332, 307, 435 and 436 RPC read with Sections 13, 16 and 18 of the UA(P) Act.

12. In brief, the accusations for which the Appellant stood arraigned and *Challan* presented before the Special Court are that in pursuance of a well-planned conspiracy among the jail inmates, including the Appellant herein, they resorted to raising anti-national slogans, damaged Government property and used jail LPG kitchen gas cylinders to make explosions and arson. The Appellant, along with other jail inmates, by use of explosions, damaged the wall of the jail premises, so that they may escape from jail. The Appellant, along with co-accused, is said to have made to commit the murder of jail officials and armed forces personnel deployed in the jail. They alleged to have formed a terrorist gang inside the Central Jail, Srinagar with the main objective of engaging in unlawful and terrorist related activities.

13. Admittedly, the Appellant stood convicted and sentenced to life imprisonment in FIR No. 48/2013 under Section 302 RPC and Section 7/25 Arms Act, therefore, the Appellant, during his lodgment in the jail, alleged to have hatched a conspiracy and indulged in terrorist related activities, which resulted in registration of FIR No. 19/2019 for the offences as mentioned hereinbefore, wherein *Challan* has been pending disposal before the Special Court.

14. Insofar as the question of grant of sanction is concerned, same has been decided by the Special Court vide Order dated May 20, 2025,



therefore, in the instant appeal, the findings recorded by the Special Court by way of a separate order, unless challenged in an appropriate proceeding, cannot be gone into.

15. As regards the other points that the Special Court has failed to return findings as to whether or not there is a *prima facie* case or as to the sanctity of evidence collected during investigation, same is not tenable, in view of the fact that the Appellant did not raise these factual as well as legal pleas before the Special Court. As we have noticed hereinbefore, the only prayer made by the Appellant before the Special Court was for grant of short term bail, that too, for two months on the ground of ailment of his mother.

16. Therefore, there was no occasion for the Special Court to deal with these factual as well as legal pleas as are raised by the Appellant in the present appeal.

17. The plea of the Appellant regarding impliedly overruling of RPC in view of coming into force of BNS and holding of joint trial of the offences under RPC and UA(P) Act is also misconceived, in view of Section 14 of the NIA Act and Section 358 of BNS read with Jammu & Kashmir Reorganization (Removal of Difficulties) Order, 2019, issued vide S. O. 3912 (E) dated October 30, 2019.

18. While scanning the file, we came across two medical prescriptions issued in the name of Mst. Zareefa, dated November 28, 2020 and August 22, 2024. Perusal of the same reveals that the patient appears to have complained of regular episode of panic disorder, for which she was prescribed medicines.

19. While testing the veracity of the submission of the Appellant that he is required at home for the treatment of his ailing mother, it came to fore that, besides the Appellant, his father, one brother and sisters are available at home to look after the mother of the appellant.



20. In view of the above countervailing factual aspects of the matter, the only unerring conclusion which can be arrived is that the plea of the Appellant before the Special Court that he is required at home for the treatment of his mother has been falsified on inquiry being made by the Special Court, therefore, the Special Court had come to the conclusion that the accused has a brother who can look after the mother and also further observed that Section 45-D of the UA (P) Act prohibits the granting of bail, unless the Court is satisfied that there is no *prima facie* case against the accused. According to the Special Court, there is sufficient material to sustain the charges, thus, the application was dismissed.

21. To the contrary, neither in the memo of appeal nor during arguments, the Court is taken to even an *iota* of material suggestive of the fact that accusation against the Appellant is *prima facie* not true, therefore, the appeal on hand, being preferred entirely on those facts which were not before the Special Court, hence, same is utterly misconceived, thus, cannot be entertained.

22. The Appellant has preferred this appeal under Section 21 (4) of the NIA Act, assailing the Order of the Special Court, whereby bail of the Appellant was rejected in view of false ground that the Appellant is required at home for facilitating the treatment of her mother and also in view of the bar contained under Section 43-D (5) of the UA(P) Act. It is undisputed that in the bail application before the Special Court, the Appellant confined his plea solely to the ground of ailment of his mother.

23. In the context of bail plea for the offences under UA(P) Act, where the statutory bar under Section 43-D (5) mandates a *prima facie* assessment based on the material on record, the Appellant's omission to raise these points is fatal. The Special Court was not apprised of nor did it have the occasion to deliberate upon the issues raised before us for the first time. Therefore, allowing these to be agitated now would tantamount to permitting a *de-novo* hearing in appeal, undermining the hierarchical



structure of adjudication and the legislative intent behind the NIA Act's appellate mechanism.

24. Even assuming *arguendo* that certain pure questions of law could be entertained like protection of liberty under Article 21 of the Constitution, the Appellant has preferred no compelling justification for exercising the extraordinary jurisdiction for granting bail, especially when material shows that the Appellant is already undergoing life imprisonment and during the lodgment in the jail committed the offences for which he is seeking bail.

25. Hon'ble the Supreme Court in "**Gurvinder Singh v. State of Punjab, (2024) 5 SCC 403**", authoritatively held that mere delay in trial pertaining to grave offences, as the one involved in the instant case, cannot be used as a ground to grant bail. In that case, the Hon'ble Supreme Court was dealing with the plea of bail of the accused, who was, *inter alia*, arraigned for the commission of offences under Sections 17, 18 and 19 of the UA (P) Act.

26. For the foregoing reasons, the present appeal being bereft of merit, therefore, same is **dismissed**. We, however, make it clear that the observations made are limited to the adjudication of the present appeal and shall not prejudice the merits of the case during trial and further it is made clear that in the event plea of bail is raised before the Court, same shall be adjudicated strictly on merits of the grounds urged before the Special Court, uninfluenced by any of the observations made by the Court.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

SRINAGAR

September 26th, 2025

"TAHIR"

i. Whether the Judgment is approved for reporting? YES.