

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

Reserved on: 08.07.2025
Pronounced on: 18.07.2025

**CRM(M) No.279/2025
CrIM No.651/2025
CrIM No.652/2025
c/w
Bail App No.88/2025**

AAMIR BASHIR MAGRAY & ORS. ... PETITIONER(S)

*Through: - Mr. Salih Pirzada, Advocate, with
Mr. Aabid Hamid, Advocate. (in CRM(M) No.279/2025))
Mr. Areeb Kawoosa, Advocate (In Bail App No.88/2025)
Mr. Gagan Oswal, Advocate, through VC (in Bail App No.88/2025)*

Vs.

UT OF J&K ...RESPONDENT(S)

Through:- Mr. Waseem Gul, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By this common judgment, the above numbered two petitions, one challenging order dated 21.05.2025 passed by the learned Principal Sessions Judge, Ganderbal, rejecting bail application of the petitioners with a prayer for grant of bail and other seeking bail in a case arising out of FIR No.28/2025 for offences under Section 318(4) of BNS registered with Police Station, Kangan, are proposed to be disposed of.

2) As per the prosecution case, on 13.04.2025, an application came to be presented by one Firdous Ahmad

Dar with Police Station, Kangan, alleging therein that he
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was approached by accused/petitioner Shahnawaz Ahmad Shah, who is working in the J&K Bank, Kangan, as Probationary Officer, and he lured him to invest in a financial scheme by promising high returns through online trading @RSN. The complainant Firdous Ahmad Dar is stated to have shared his Aadhar, PAN and bank account credentials with him whereafter the accused/petitioner Shahnawaz Ahmad Shah started using his bank account for suspicious financial transactions. It was further alleged that the complainant transferred an amount of Rs.5.00 lacs from his bank account to the bank account of Shri Ghulam Nabi Shah, the father of petitioner Shahnawaz Ahmad Shah on the promise of immediate monetary returns but no such returns were provided to the complainant. It was also alleged that the bank account of the complainant was flagged by the bank authorities and a lien was marked on it due to involvement in suspicious transactions. It was further alleged by the complainant that he had come to know that sister of petitioner Shahnawaz Ahmad Shah, petitioner Rumaisa Jan and her fiancé, petitioner Dr. Aamir Bashir Magray, were also involved in these dishonest activities and that they were deceiving several locals by guaranteeing huge returns through fake online trade platforms.

3) On the basis of the aforesaid complaint, FIR No.28/2025 for offences under Section 318(4) of BNS was registered and investigation was started during which statements of several witnesses under Section 180 and 183 of BNSS were recorded. The Investigating Agency also scrutinized bank accounts of accused persons. The accused/petitioners were arrested on 13.04.2025 and their mobile phones and other documents found in their possession were seized. During the course of investigation, correspondence was made with several banks and account details of the accused/petitioners were sought from J&K Bank, Kangan, SBI Kangan, HDFC Kangan, PNB Kangan, and Indus Ind Bank, Srinagar, and it transpired that huge credit/debit transactions worth approximately 53 crores had taken place from the bank accounts of the petitioners/accused. According to the Investigating Agency, the petitioners could not give any satisfactory explanation/ clue regarding these huge banking transactions.

4) The respondent Investigating Agency has, in its report, given details of the transactions that have taken place in the bank accounts pertaining to the petitioners/accused. It has been claimed that a total amount of Rs.4,15,29,412/ has been credited into the account of petitioner/accused Shahnawaz Ahmad Shah, a total amount of

Rs.22,31,38,970/ has been credited into the account of petitioner/accused Rumaisa Jan, a total amount of Rs.26,43,3,842/ has been credited to the account of petitioner/accused Aamir Bashir Magray and a sum of Rs.24,10,69,825/ has been credited into the account of petitioner/accused Ghulam Nabi Shah.

5) According to the Investigating Agency, the petitioners have lured poor and young people into cyber fraud promising them double returns and they have deceived a large number of people. It has been submitted that the investigation is going on so as to determine the source of these funds. It has been submitted that during investigation, it was found that accused Aamir Bashir Magray has been engaged with accused Rumaisa Jan and accused Shahnawaz Ahmad Shah is working as Probationary Officer at J&K Bank, Branch Kangan. According to the prosecution, a fake online trading platform @RSN website has been set up by the accused which is not registered or approved by the Government and FIR No.05/2025 for offences under Section 66-D IT Act, 3(5), 61(1), 111(2), 319(2) of BNS stands registered against accused/ petitioners Aamir Bashir Magray, Shahnawaz Ahmad Shah and Rumaisa Jan with Cyber Police Station, Srinagar, and the investigation in the said case is

underway. It has been submitted that custody of the petitioners/accused was transferred to Cyber Police Station, Srinagar, on 01.05.2025.

6) It has been submitted by the respondent Investigating Agency that during investigation of the present case, after obtaining search warrants, the house of the accused Ghulam Nabi Shah was subjected to search. During investigation, it was found that brother of accused Shahnawaz Ahmad Shah, Shri Owais Ahmad Shah, who is currently pursuing his MBBS course in Bangladesh is also involved in the case. It has also been established during investigation of the case that petitioner/accused Aamir Bashir Magray has purchased 02 kanals of land for an amount of Rs.2.5 crores in the year 2023-24. It has been further submitted that during investigation of the case it was found that there were significant financial transactions between the petitioners/ accused *inter se*. It has been submitted that the accused persons have been found to be in possession of a large number of bank accounts, debit/credit cards, the details whereof have been given in the report.

7) According to the prosecution, the petitioners are involved in serious and grave economic offences and their activities show a systematic and organized criminal

conspiracy wherein several individuals including bank officials have misused their official positions to lure victims with false promise of high returns. It has been submitted that because the petitioners are involved in FIR No.5/2025 registered by Cyber Police Station, Srinagar, for similar offences, as such, Section 111 of BNS has been invoked against them in the present case. It has been submitted that the Income Tax Department has also been informed regarding huge online banking transactions in which the petitioners have indulged and the provisions contained in Section 4 of PMLA are also to be invoked and the investigation is stated to be still going on.

8) It seems that the petitioners had approached the Court of learned Principal Sessions Judge, Ganderbal, for grant of bail but their bail application has been rejected by the said Court in terms of order dated 21.05.2025, which is under challenge in CRM(M) No.279/2025. It also appears that the petitioners have been enlarged on bail in FIR No.5/2025 registered with Cyber Police Station, Srinagar, on 17.05.2025, whereafter their custody has been shifted to the present case.

9) The petitioners have sought bail in the aforesaid FIR on the grounds that the offence under Section 4 of PMLA has not been added as yet by the Investigating Agency but

the learned Sessions Judge, Ganderbal, has merely on the basis of apprehension that the provision of Section 4 of PMLA may be invoked in the present case, rejected the bail application of the petitioners. It has been further contended that the respondent Investigating Agency has invoked Section 111 of BNS, which pertains to organized crime without there being any basis for the same, simply with a view to deny the concession of bail to the petitioners. It has been further submitted that even the provisions contained in Section 318(4) of BNS are not attracted to the present case as there is no allegation that the petitioners/accused have forged any valuable security. It has also been contended that petitioner Shahnawaz Ahmad Shah is undergoing treatment for cancer whereas petitioner Rumaisa Jan is also on medication. It has been further averred that petitioner, Ghulam Nabi Shah is an old aged person and on these grounds it has been submitted that they are entitled to bail even on humanitarian grounds.

10) The respondent Investigating Agency has opposed the prayer of the petitioners for grant of bail, primarily, on the ground that the petitioners/accused are involved in a huge financial scandal and that they have deceived and duped thousands of people by committing fraud upon them. It has been contended that during investigation of the case, it has

been found that transactions worth more than 53 crores have taken place from the bank accounts of the petitioners/accused and the investigation of the case is still in progress to unearth the magnitude of fraud. It has also been contended that grant of bail to the petitioners at this stage would hamper the investigation as some of the associates of the petitioners are still at large.

11) I have heard learned counsel for the parties and perused record of the case including the Case Diary.

12) Although the petitioners have sought bail on the grounds as enumerated hereinabove, yet, during the course of arguments, the learned counsel appearing for the petitioners have laid emphasis on the ground that irrespective of the merits of the case, the petitioners are entitled to default bail because they have been in custody in the present case for more than sixty days. It has been submitted that the offence under Section 4 of PMLA has not been invoked against the petitioners as yet whereas offence under Section 111 of BNS is not attracted to the facts of the present case and the same has been invoked by the Investigating Agency only to deny default bail to the petitioners.

13) In the above context, if we have a look at the Case Diary produced by the respondents, it is revealed that the

petitioners were arrested in the present case on 13.04.2025 and on 01.05.2025, their custody was transferred from the present case to FIR No.5/2025 registered with Cyber Police Station, Srinagar. It is also an admitted fact that the petitioners were granted bail in FIR No.5/2025 by Chief Judicial Magistrate, Srinagar, on 17.05.2025, whereafter their custody was shifted to present FIR. As on today, the petitioners have spent around 75 days in custody in the present case.

14) As per the provisions contained in sub-section (3) of Section 187 of BNSS, a Magistrate can authorize detention of an accused person beyond the period of fifteen days for a total period not exceeding ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more and where the investigation relates to any other offence, the detention cannot be authorized for a period exceeding sixty days. It further provides that on expiry of the said period of ninety days or sixty days, the accused has to be released on bail if he is prepared to and does furnish bail.

15) In the present case, initially the FIR was registered for offences under Section 318(4) of BNS. The said offence is

punishable with imprisonment of either description for a term which may extend to seven years and to fine. So, the maximum period for which a person accused of an offence under Section 318 of BNS can be detained in custody is sixty days. During the course of investigation of the case, the respondent Investigating Agency has invoked offences under Section 316(5), 111, 3(5), 61(1) of BNS and Section 66-D of IT Act. All these offences except the offences under Section 111 and 316(5) of BNS carry punishment of less than ten years of imprisonment. The offence under Section 111 of BNS carries punishment which may extend to imprisonment for life. Similarly, offence under Section 316(5) of BNS also carries maximum punishment of imprisonment for life. Thus, if it is shown from the material on record of the Case Diary that the petitioners are not involved in offence under Section 111 of BNS or offence under Section 316(5) of BNS, they can claim default bail in terms of sub-section (3) of Section 187 of BNSS on the ground that they have spent more than sixty days in custody in the present FIR.

16) So far as offence under Section 111 of BNS is concerned, it defines and prescribes punishment for offence of organized crime. According to this provision, any continuing unlawful activity, which includes economic

offence, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate by use of violence, threat of violence, intimidation, coercion or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, constitutes organized crime. Explanation (ii) defines 'continuing unlawful activity' as an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one chargesheets have been filed before a competent court within the preceding period of ten years and that court has taken cognizance of such offence and includes economic offence.

17) Thus, for bringing an activity of an accused within the definition of 'organized crime' it has to be shown that such person has indulged in continuing unlawful activity which may include, *inter alia*, an economic offence. It is also to be shown that the concerned person must have been charge sheeted before a court of competent jurisdiction in respect of such unlawful activity more than once in preceding ten

years and the court should have taken cognizance of such offence.

18) In the present case, the basis on which the investigating agency has invoked Section 111 of BNS is that the petitioners have been booked in FIR No.5/2025 of Cyber Police Station, Srinagar. There is nothing on record and not even an allegation emanating from the investigating agency that any chargesheet has ever been filed against the petitioners in respect of any unlawful activity including an economic offence in the previous past nor there is any assertion that any court has taken cognizance of such offence against the petitioners. Therefore, invocation of Section 111 of BNS against the petitioners by the Investigating Agency does not have any basis at all, at least upto the present stage of investigation.

19) That takes us to the question as to whether the offence under Section 316(5) of the BNS is made out against the petitioners. It is alleged in the FIR that the petitioner Shahnawaz Ahmad Shah is working as a Probationary Officer in J&K Bank Branch Kangan and in that capacity, he induced one Firdous Ahmad Dar to provide him bank account credentials and he also induced him to transfer Rs.5.00 lacs from his bank account, whereafter he used his

bank account for suspicious financial transactions. There is material on record to suggest that there have been huge financial transactions in the bank accounts of the petitioners and credits to the extent of more than Rs.53 crores have been made in their bank accounts. There is material on record to show that there have been transactions, *inter se*, in the bank accounts maintained by the petitioners.

20) Section 316 of BNS provides for punishment in respect of offence of criminal breach of trust committed by, *inter alia*, a public servant or as a banker. Petitioner Shahnawaz Ahmad Shah, who was working as a Probationary Officer in the J&K Bank, has committed criminal breach of trust reposed on him by complainant Firdous Ahmad Dar who was maintaining a bank account in the bank where petitioner Shahnawaz Ahmad Shah was working by using his account credentials for suspicious financial transactions. Thus, *prima facie*, petitioner Shahnawaz Ahmad Shah is involved in the commission of offence of criminal breach of trust punishable under Section 316(5) of the BNS and because there are *inter se* banking transactions between petitioner Shahnawaz Ahmad Shah and the other petitioners, there is material on record to show that all the petitioners were working in

concert and were part of the conspiracy. Therefore, there is prima facie material on record to show that the petitioners are involved in commission of offence under Section 316(5) of BNS read with Section 61 BNS. Thus, it cannot be stated that the Investigating Agency has erroneously invoked the provisions of Section 316(5) read with Section 61 of BNS against the petitioners.

21) Since the offence under Section 316(5) of BNS carries maximum punishment of imprisonment for life, as such, the provisions of default bail in the case of petitioners would not come into play and the same would get attracted only if the petitioners remain in custody beyond ninety days without filing of the charge sheet against them. Since the period of ninety days is yet to expire, as such, the contention of the petitioners in this regard is not tenable.

22) That takes us to the merits of the prayer regarding grant of bail. As already indicated hereinabove, there is prima facie material on record to show that the petitioners are involved in suspicious financial transactions and as per the prosecution case, there have been transactions of more than Rs.53 crores in the bank accounts of the petitioners in the recent past. The statements of as many as 13 witnesses have been recorded by the Investigating Agency

during investigation of the case, in which they have confirmed the fact that they have been duped by the petitioners at different times by luring them to engage in online investments. As per case of the Investigating Agency, there are thousands of other victims whose statements are yet to be recorded and the investigation in this regard is still in progress. Therefore, not only the investigation of the case is still in progress but the material on record collected by the Investigating Agency so far points towards a huge financial/cyber fraud that was being perpetrated by the petitioners in concert with other.

23) Learned counsel for the petitioners, while relying upon the ratio laid down by the Supreme Court in **Satender Kumar Antil vs. CBI**, (2022) 10 SCC 51, **Sanjay Chandra vs. CBI** (2012) 1 SCC 40, and **State through CBI vs. Amarmani Tripathi** (AIR 2005 SC 3490), has contended that merely because the petitioners are involved in an economic offence does not disentitle them to grant of bail.

24) It is true that only because the petitioners are involved in an economic offence does not disentitle them to grant of bail but in **P. Chidambaram v. Directorate of Enforcement**, (2020) 13 SCC 791, it has been held that economic offences fall under the category of 'grave offence' and in such circumstances while considering the

application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegations made against the accused. It has been further observed that such consideration with regard to gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied but as a rule, bail cannot be denied in every case of economic offence as no such bar is created in the relevant enactment. The Supreme Court further held that ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

25) In the instant case, as already stated, the investigation of the case is still in progress and is nowhere near completion. The allegations against the petitioners are serious in nature. Therefore, it is not a case where the petitioners despite being involved in a grave can be enlarged on bail at this stage even though there is no statutory bar in granting such relief in their favour.

26) During the course of arguments, it has also been contended that the petitioners have not been furnished the grounds of arrest at the time of their arrest, as such, they are entitled to bail in view of the law laid down by the

Supreme Court in the case of **Prabir Purkayastha v. State (NCT of Delhi)**, AIR 2024 SC 2967.

27) In the above context, it is to be noted that neither in the bail application nor in the petition under Section 528 of BNSS, the petitioners have pleaded that they were not furnished with the grounds of arrest. They have not challenged their arrest nor have they challenged orders of remand passed by the learned Magistrate from time to time. Unless the petitioners/accused specifically allege that the grounds of arrest were not furnished to them, the burden of proving the same would not shift to the Investigating Agency. There is no pleading to this effect in either of the two petitions. Therefore, it is not open to the petitioners to urge these contentions without laying any basis for the same.

28) So far as the contention of the petitioners Shahnawaz Ahmad Shah and Rumaisa Jan that they are entitled to bail on medical grounds is concerned, the same is also without any basis. The medical record annexed to the bail application reveals that petitioner Shahnawaz Ahmad Shah has been suffering from non-metastatic osteosarcoma of left femur since the year 2006. There is nothing on record to show that his condition has deteriorated over the years.

Similarly, medical record in respect of petitioner Rumaisa

Jan does not suggest that she is suffering from any serious ailment. Therefore, they are not entitled to bail on medical grounds as well.

29) For the foregoing reasons, the petitioners are not entitled to bail at this stage. I do not find any merit in these petitions, as such, the same are dismissed along with connected CrIM(s).

(Sanjay Dhar)
Judge

Srinagar,
18.07.2025
“Bhat Altaf-Secy”

Whether the **judgment** is reportable: YES/NO

