



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

Bail App No. 141/2024

Reserved on : 28.05.2025
Pronounced on : 20.11.2025
Uploaded on : 20.11.2025

Khalid Hussain @ Munna aged 23 years
S/o Ahmad Din @ Aima
R/o Kangar, Tehsil Bhalwal,
District Jammu.

.... Petitioner

Through:- Ms. Zainab Shamas Watali, Advocate

V/s

State/UT
Through SHO
Police Station Gharota
Jammu.



.....Respondent

Through:- Mr. Pawan Dev Singh, Dy. AG

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

01. Through the medium of present petition filed on **05.06.2024**, the petitioner-Khalid Hussain @ Munna, who happened one of two accused in a criminal case pending adjudication before the court of learned 2nd Additional Sessions Judge, Jammu, is seeking grant of bail after having suffered continuing custody in connection with the case with effect from 2018 onwards. The co-accused No. 2 -Azam



Hussain died during pendency of trial leaving petitioner to be sole undertrial accused in custody.

02. **FIR No. 0109/2018** dated **08.11.2018** by the Police Station Amb Gharota, Jammu for alleged commission of offence under section 302/34 Ranbir Penal Code came to be registered at 2.50 a.m. with respect to the alleged incident of death of one Mohd. Jabbar @ Ganju reckoned to be a homicide.

03. The registration of said FIR No.0109/2018 was at the instance of one Mukhtiyar Ahmed S/o Dawood Mohd. reckoning himself to be uncle of deceased-Mohd. Jabbar by submitting a handwritten complaint in Urdu.

04. In the FIR, the complainant Mukhtiyar Ahmed, cited as prosecution witness No.1, came to register his accusation that Jabbar was killed by Khalid Hussain @ Munna and Azam Hussain S/o Lal Din R/o Kangar bearing common intention and using sharp edged weapon.

05. The registration of FIR led to the arrest of the petitioner- Khalid Hussain @ Munna on **13.11.2018**, whereas the co-accused Azam Hussain was arrested on **08.11.2018**.



06. The Police Station Amb Gharota Jammu, came to investigate the case and come up with a **Final Police Report (Charge-sheet) No. 01/2019** dated **07.01.2019** thereby booking two named accused persons i.e. Azam Hussain & Khalid Hussain @ Munna for alleged commission of offences under section 302/34/201 Ranbir Penal Code read with sections 4 & 25 Arms Act.

07. In the Final Police Report (Charge-sheet), the Investigating Officer (I.O.) came to name 35 prosecution side witnesses.

08. No person as eye-witness came to be cited in the case and the entire edifice of the prosecution case is based upon circumstantial evidence through the medium of the prosecution witnesses cited in the case.

09. The **Final Police Report (Charge-sheet) No. 01/2019** above referred came to be presented before Judicial Magistrate Ist Class (Sub Judge), Jammu on 07.01.2019 wherefrom the case was committed to the court of Principal Sessions Judge, Jammu on 16.01.2019 and finally getting transferred for trial to the court of 2nd Additional Sessions Judge, Jammu on 02.02.2019 on its file No. Sessions Case/10/2019.



10. The registration of FIR had taken place when the complainant Mukhtiyar Ahmed had allegedly received a phone call on his phone from Shakeela Bibi, the wife of deceased Jabbar, on **07.11.2018** at about 6:45 p.m. thereby apprising the complainant-Mukhtiyar Ahmed that Jabbar had been called by Khalid Hussain @ Munna on the pretext that he has brought some milk for Jabbar for which he needs to come and take it for which her husband left the home.

11. Said Shakeela Bibi is said to have even called her husband to be told in return that he was sitting with Khalid Hussain @ Munna and also Azam Hussain, therefore, would be coming back soon, but later on the phone of Jabbar went in switch off mode thereby raising suspicion about some foul play on account of old enmity between Khalid Hussain @ Munna and Jabbar.

12. It came to be stated in FIR that it is in the intervening night of **07.11.2018** and **08.11.2018** at about 1:45 a.m. in the course of search for Jabbar that the complainant upon reaching Karwanda Talab found Jabbar having been murdered.



13. The Investigating Officer (I.O.) came up with a narrative that the deceased-Jabbar had been called by the petitioner - Khalid Hussain @ Munna on all mobile numbers of the deceased-Jabbar and his family members and finally had himself gone to the house of one Mohd. Latief S/o Dawood at Bhalwal insisting upon Mohd. Latief to call Jabbar who was his nephew for meeting them at Bhalwal. The accused persons are stated to have even called Jabbar from their own mobile phones in presence of Mohd. Latief.

14. The Investigating Officer (I.O.) is said to have fetched a confession during the course of investigation in interrogation of the accused persons about commission of offence by them of killing Jabbar @ Ganju on the bank of pond Karwanda Talab by use of a knife and later de-facing the deceased victim Jabbar by blow of stone.

15. The motive attributed to the accused for commission of offence was that the petitioner- Khalid Hussain @ Munna had developed one sided liking/love for Shakeela Jan, the wife of deceased- Mohd. Jabbar and as the deceased-Jabbar was not willing to leave his wife- Shakeela Jan so it was planned to eliminate Mohd. Jabbar from the scene which led to the alleged incident.



16. In the Final Police Report (Charge-sheet), the version which came to be set out about the manner in which the deceased- Mohd. Jabbar had left his residential house came to be different to the one as stated in the FIR as to the version of the circumstances in which the deceased- Jabbar had left his residence.

17. The petitioner-Khalid Hussain @ Munna claimed himself to be a juvenile which resulted in an enquiry which culminated in the form of an order dated 31.10.2020 holding the petitioner - Khalid Hussain @ Munna aged 20 years, 7 months & 5 days at the time of alleged commission of offence.

18. During the pendency of trial, the other co-accused – Azam Hussain S/o Lal Din came to be admitted on bail on medical grounds who later on expired leaving the petitioner as sole accused to suffer the trial.

19. In terms of an order dated **08.11.2021**, the trial court had come to frame charges against the two accused persons.

20. There are 35 prosecution witnesses cited in the Police Challan. There is no prosecution witness who comes forward as an eye witness to the alleged incident of



commission of crime by the two accused persons which includes the petitioner herein. All the prosecution witnesses cited to prove the alleged occurrence are relatable to circumstantial testimony.

21. The prosecution is still leading its evidence and this is where Ms. Zainab Shamas Watali, the learned counsel for the petitioner submits that the petitioner cannot be made to suffer the agony of continuing custody which has lasted more than seven years in running and the prosecution evidence is still far away from being completed and, as such, continuing custody of the petitioner has literally become incarceration and persecution for the petitioner.

22. Ms. Zainab Shamas Watali, Advocate, arguing for the petitioner very vehemently submits that the circumstantial evidence so far led in the case does not chain together to even remotely implicate the petitioner in the alleged commission of offence in the backdrop of narrative set up by the Prosecution and that the petitioner is being prosecuted just for the sake of persecution proceeding on conjectures and surmises which is gatherable in bold print from the very tone and tenor of FIR and the timing with



which it came to be lodged by the complainant - Mukhtiyar Ahmed, the prosecution witness No. 1.

23. The bail is being resisted by the respondent – UT of Jammu & Kashmir narrating the sequence of facts and circumstances which led the Investigating Officer to conclusion about the complicity of the petitioner and the other co-accused for commission of alleged offence by use of a weapon of offence knife and also stone by use of which the deceased was put to death and disfigurement of his face. The alleged weapon of offence knife is said to have been thrown into the pond whereas the stone was also left at the spot.

24. It is being submitted by the learned Government Advocate for the UT of Jammu & Kashmir that given the serious nature of offence committed, the petitioner does not deserve to be released on bail as he may indulge in an effort to prevail upon the prosecution witnesses who are yet to be examined.

25. The motive for the alleged commission of crime by the petitioner and the co-accused- Azam Hussain is said to be one sided love for Shakeela Jan, the wife of the deceased- Mohd. Jabbar whom the deceased was not ready to leave on



account of being married to her for the last two years when she had eloped with deceased-Mohd. Jabbar.

26. The petitioner is said to have enticed the co-accused–Azam Hussain to carry out the alleged commission of offence on the assurance of payment of Rs. 2 lac and also to get Azam Hussain married. It is being submitted that the petitioner and the co-accused had made phone calls on 07.11.2018 to the deceased victim calling him to join the petitioner to which the deceased registered his refusal and in the end the petitioner went up to the house of deceased and in front of his wife Shakeela Jan got deceased along with him by saying that he would come back to house after some time after taking milk from him which the petitioner had brought for him.

27. The petitioner failed to earn indulgence of the trial court of 2nd Additional Sessions Judge, Jammu in getting bail as his bail application came to suffer rejection last year on 18.05.2024 at which point of time prosecution witness No. 7-Abdul Gani, prosecution witnesses No. 2-Latief Khan, prosecution witness No. 1 – Mukhtiyar Ahmad, prosecution witness No. 16- Jamat Ali, prosecution witness No. 18 – Shakeela Jan & prosecution witness No. 19 – Saleem Ahmad had come to be examined.



28. This Court has been approached with the bail petition of the petitioner when additional prosecution witnesses have been examined. The provision of law which vests jurisdiction exercisable on discretion in the matter of grant of bail is under section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 (corresponding to section 43 of the Code of Criminal Procedure, 1973).

29. In the matter of grant of bail to an accused in a criminal case which is undertrial, this court can have only an overview of the case from the record as compared to the trial court, if approached for bail by an undertrial, which is having a running insight into the evolving state of evidence in the matter of considering whether the case is made out for grant of bail to an undertrial accused in custody.

30. When this Court is to have an overview of the case from the record even in that situation, the constraint is that this Court is not to reflect upon merits and demerits of the Prosecution case, be it by deliberation or default, as any observation drawn on that basis may have an effect, immediate or later, of instilling in the mind of the trial court that the evidence led in the case is meant to be seen from the perspective with which the Higher Court in the matter of granting of bail has appropriated and applied in the matter



of granting or refusing the bail and, accordingly, it may have a telling effect on the final judgment to be made by the trial court on the guilt or innocence of an accused undergoing trial in the case.

31. What this Court is obliged to do in the matter of grant or refusal of bail to an undertrial in custody in an ongoing criminal case is to provide a reason as to why the bail is being granted or denied thereby making the reason indispensable part of the order in the matter of granting or refusing the bail.

32. The reason which weighs upon with this Court in the matter of granting bail in the present case is that the petitioner is in custody for the last seven years with co-accused No. 2-Azam Hussain having demised during the pendency of the trial and the entire Prosecution case being built upon circumstantial evidence which may or may not result in conviction of the petitioner for alleged commission of offence. The quality of circumstantial evidence in proving the commission of offence beyond a reasonable doubt is, therefore, for the trial court to assess, appraise and actuate. The prosecution witnesses who are immediate in terms of creating and casting the narrative to the prosecution case set up against the petitioner and co-accused, who is now



deceased, have been examined and, therefore, there is no question of said prosecution witnesses being swayed by the petitioner in the event of being enlarged on bail. The prosecution witnesses, which are yet to be examined, are mostly official witnesses whose testimony is to be drawn from the documents referable to them which includes the Police personnel of Police Station Gharota.

33. The petitioner has not been projected to be a person with criminal antecedents of any sort.

34. The concern of criminal administration of justice is to ensure that the accused person bearing trial does not flee from the call of justice. This aspect of the case can be well attended to by restricting the scope with respect to the petitioner's movement upon being enlarged on bail.

35. In the light of the aforesaid facts and circumstances, this Court is of the view that enlargement of the petitioner on bail would have no prejudicial effect on the criminal trial going on before the court of 2nd Additional Sessions Judge, Jammu.

36. Therefore, this Court grants bail in favour of the petitioner subject to terms and conditions which this Court leaves for the trial court of learned 2nd Additional Sessions



Judge, Jammu to put in place so as to ensure that the petitioner attends the trial in person regularly without indulging in any act of omission or commission to derail the trial, intimidate or influence the prosecution witnesses which are yet to be examined or those already examined and does not leave the territorial jurisdiction of the trial court without express permission of the trial court and also furnish sound surety bond and also furnish personal bond of a higher amount so as to ensure that he does not venture to jump the bail so long as the trial of the case is lasting and he is there to hear the final verdict from the court below.

37.

Disposed of.

सत्यमेव जयते

(Rahul Bharti)
Judge**JAMMU**
20.11.2025
Muneesh

Whether the judgment is speaking : **Yes**
Whether the judgment is reportable : Yes/ No