

**IN THE COURT OF
PRINCIPAL SESSIONS JUDGE ANANTNAG**

File No.	195/Bail
Date of Institution	29.04.2025
CNR No.	JKANO10006092025
Date of Order	27.06.2025

In the case of:
Zubair Ahmad Bhat
S/O Mushtaq Ahmad Bhat
R/O Ganeshbal Pahalgam Anantnag
Applicant/Accused
(Through Suhail Beg Advocate and Associates)

Versus
U.T of J & K through SHO P/S Pahalgam
Respondent
Through Ld.PP

In the matter of:
Application for grant of bail in favour of the Applicant/accused
involved in FIR No. 21/2025 u/sections 64,331-(4) of BNS
registered with P/S Pahalgam,

Coram : **Tahir Khurshid Raina**
 (UID No.JK00055)

ORDER

1. *A beautiful Urdu couplet that captures the rich hospitality of Kashmir goes like this:-*

***Rastey mein Sanghrazno ne diya Pani Mujay.
Zarra Zarra hai meray Kashmir Ka Mehman
Nawaz.***

Translation:

***En route, pebbles offered me water.
Every particle of my Kashmir is a cradle of
hospitality.***

2. Notwithstanding the picturesque, serene and eye catching beauty of the valley of Kashmir, it's rich cultural values combined with a blend of hospitality par excellence, has

attracted tourists from across the world to visit, experience and enjoy the enchanting beauty of Kashmir-often described as “**heaven on earth**”. These tourists have, in turn enriched the culture and value system of the Kashmir to a level that matches the global standard of civilization. However, hospitality of the people of Kashmir has in-fact, outweighed all other lofty values for which Kashmir has been known across the world. ***Hospitality means-the friendly and generous reception and entertainment of guests, visitors, or strangers.***

3. The reason for this prelude is that the lesser known, yet highly aggravated incident-which has in fact, cast a shadow over the said legacy of Kashmir-unfortunately also relates to **Pahalgam** which is not known in the world today for good reasons, contrary to the status it enjoyed in the yesteryears on the tourist map of the country and the world.
4. This court is pained to mention that the alleged facts given rise to the lodging of an FIR, followed by what stands discerned from the investigation, are so unethical that it glaringly stigmatize the rich and lustrous legacy of Kashmir-particularly its hospitality, as referred in the prelude.
5. A senior lady from Maharashtra, a 70-year-old widow, who was in Pahalgam with her son's family to enjoy the beauty of Kashmir, is alleged to be sexually assaulted by the accused, a man even younger than her son who is complainant in the case. Taking the advantage of her being alone in her hotel room at Pahalgam, the accused as allegedly, entered into her room, gagged her mouth in the blanket, raped her, caused her injuries, and then fled through the window of the room. So brutal was the sexual

assault on her that the old lady was unable to sit and move and remained in pain for days together.

6. The investigation in the case is going on and the perusal of the Case Diary (CD) file prima facie reveals the commission of offence of rape on a senior citizen lady by the accused in a highly dastardly manner. This is what she has carried from the Pahalgam for rest of her life where she had come to enjoy the beauty of Kashmir.
7. Accused-applicant has preferred a bail application seeking release on bail, inter alia, on the grounds that the police harbored some personal grudge against him and his father, on account of which he has been falsely implicated in the case. It is alleged that investigation in the case is not being conducted in a fair and just manners. That he is willing to cooperate with the investigation and will not flee. That no test identification parade in the case is conducted.
8. Upon presentation of the said bail application, the learned Public Prosecutor (Ld.PP) of the court was directed to respond and submit the report in the first instance. Further directed to submit the CD and objections to the said bail application. On filing of the same, the bail application was heard.
9. Before addressing the issue of whether bail is to be granted or refused to the accused-applicant, it is pertinent to mention that the said bail application ought to have been decided by the court of Ld. Additional District Judge, (Special Judge Designated for the trial of rape cases), District Anantnag. However, due to the recusal by the Ld. Judge of the said court from hearing the matter on some personal grounds, it was filed before this court, and is now heard and decided by this court.

Heard and perused.

10. At the risk of repetition, the case diary (CD) was perused. The appreciation of the material on record which includes the complaint, the statements of the witnesses viz-a-viz of the prosecutrix (who happened to be the star witness in the case), the Medical opinion, FSL Report, TIP, etc collectively and prima facie negates the grounds of bail advanced by the accused. The investigation is still underway.
11. Counsel for the accused in his arguments has vehemently relied on the celebrated principle of **“bail, not jail”** for the grant of bail to the accused and referred to the judgment of the Hon’ble Supreme Court in **Sanjay Chandra case 2011**, in support of his prayer for grant for bail.
12. There is absolutely no denial to the said recognized principle of “bail not jail”. However, in my humble appreciation of the said principle, the same is to be recognized, regarded and applied while also considering a catena of other factors, which have been emphasized in umpteen judgments of the Hon’ble Supreme Court to be considered by Criminal Courts when deciding bail applications. ***The said factors are: gravity and severity of the offence; the severity of the punishment prescribed for the alleged offence; level of accusation against the accused; stage of investigation/trial; potential/tendency of the accused to flee from investigation/trial; his tendency and potential to hamper and temper with the evidence/investigation; to be a flight risk accused; and last but not the least, the impact of the offence on society and the consequences to follow in case bail is granted to the accused.***
13. These factors are merely just illustrative and not exhaustive in nature. From my appreciation of the law on

bail, these factors have to be given due regard while considering bail applications in non-bailable offences of serious and heinous nature. At the risk of repetition, the much referred and recognized principle of “bail not jail” cannot be blindly followed at the cost of ignoring all the said factors. In-fact, the said principle draws its strength to sustain only when many of such factors *prima facie* put their load in its favour.

14. Now, applying the same to the facts of the case in hand, I do not find any of the ground pleaded in the application and arguments advanced by the Ld. counsel for the accused to influence the judicial conscious of this court to describe the incarceration of the accused as legally unsustainable and unwarranted at this stage of the investigation, which is even yet to culminate into a charge sheet.
15. The Ld. Counsel for the accused-applicant has very empathically referred to the judgment (*supra*) in support of his prayer for grant of bail. However, in the paragraphs 21,22 and 23 of the said judgment, all the aforementioned factors have been recommended to be considered by Criminal courts while deciding a bail application.
16. ***Finally, keeping in view the whole gamut of the case in the backdrop of the aforementioned factors to be applied to weigh the sustainability of the prayer for grant of bail, this court does not legally reconcile with the prayer for bail at this stage, which is accordingly rejected.***
17. Before parting, this court wishes to put on record its remarks on this unfortunate incident, as the society speaks through judge.

18. The alleged incident is highly unfortunate, condemnable by all possible words , and ought to have jolted the conscious of this society- which claims its moorings to be based on rich ethical values and culture- but now stands shaken to the hilt. A revered guest, who was a senior lady was on her visit this land of saints and seers, was treated so shabbily and shockingly that for all times to come, she will have remorse over the choice of place she made to spend a period of her old age days with her children. It is not an isolated act to be ignored, but a reflection of a highest degree of depravity and sick mentality prevailing in the society-which must bow its head down in shame and invites a serious introspection as to what it stood for, and how that has now collapsed.
19. This court, which every day witnesses the reflection of the probity level of this society, express its concern that it is hopelessly getting eroded on various fronts. No sooner the sheet-anchors, conscious keepers, watch dogs, and philanthropists of this society will rise to the occasion to check what is going wrong on the moral front of the society, the better will be for saving the Kashmir as the paradise on earth in its true sense. ***Mere meadows, mountains, lush green fields, forests, springs, rivers, rivulets and gardens will not come to the rescue of Kashmir as a desired tourist destination.***

**Announced.
27.06.2025**

**Principal Sessions Judge
Anantnag.**