



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

CJ Court

**Reserved on: 20.04.2026
Pronounced on: 07.05.2026
Uploaded on: 07.05.2026**

Case No. Crl A(D) No. 22/2025

Whether the operative part or full
judgment is pronounced: **Full**

Burhan Ahmad Mattoo, 23 years old
S/o. Mohammad Azad Mattoo R/o
Gangipora Mirbazar Tehsil and
District Anantnag, through his father
namely Mohammad Azad Mattoo

.....Appellant(s)/Petitioner(s)

Through: Mr. Parvaiz Amin Wani, Adv.
Mr. Rayees Ahmad Dar, Adv.

vs

Union Territory of Jammu and Kashmir
through SHO Police Station Srigufwara
Anantnag

.....Respondent(s)

Through: Mr. Mohsin Qadiri, Sr. AAG with
Mr. Maha Majeed, Adv.

**Coram: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

JUDGMENT

PER OSWAL-J

1. This appeal has been filed against the judgment dated 20.02.2025 rendered by the Court of learned Special Judge (UAPA), Anantnag (hereinafter to be referred as 'the trial court'), whereby the application filed by the appellant for grant of bail in charge sheet arising out of FIR No. 102/2020 for offences punishable under Sections 307 IPC, 7/25



Arms Act and Sections 13, 18-B, 20, 23, 33 and 39 Unlawful Activities (Prevention) Act, 1967 (for short 'the Act), has been rejected.

2. It is stated that the appellant was arrested on 17.11.2021 pursuant to the statement made by the accused Hafiz Abdullah Malik and no incriminating material has been seized from the appellant. It is contended that the statement made by the accused-Hafiz Abdullah Malik during the Police custody is not valid in the eyes of law. It is also urged that out of 30 witnesses cited by the prosecution, only 13 witnesses have been examined till date and the witnesses examined so far have not implicated the appellant in the commission of offences under sections 13 and 39 of the Act for which the appellant has been charged.
3. Respondent has filed the response, stating therein that on 08.11.2021, Police Station, Sirgufwara received specific information about hiding of the militants in Village Wahadan. On receipt of the said information, said village was cordoned off by the security forces along with police personnel of Police Station, Sirgufwara and search was launched to trace out the hiding militants. During search, one militant of banned outfit Lashkar-e-Taiba was apprehended in injured condition at Village Wahadan. During initial interrogation, the apprehended militant revealed his name as Hafiz Abdullah Malik and one pistol, one magazine and seven cartridges of pistol were recovered from his possession. During questioning, the alleged accused disclosed that the appellant (Burhan Ahmed Mattoo) was working as 'Over Ground



Worker' with the terrorist organization, Lashkar-e-Taiba. After completion of the investigation, charge sheet was produced before the competent court of law on 30.04.2022. Out of 30 witnesses cited by the prosecution, statements of 13 witnesses have been recorded. It is further averred that the learned trial court has rightly dismissed the bail application.

4. Learned counsel for the appellant has submitted that the appellant has been arrayed as accused only on the basis of disclosure statement made by accused-Hafiz Abdullah Malik and except that statement, there is no evidence against the appellant with regard to his involvement in commission of any offence. He has further argued that the appellant has been in custody for the last nearly four and a half years and the witnesses examined by the prosecution so far have not deposed against the appellant. Learned counsel for the appellant further submitted that a single-line insertion was made into the disclosure statement of the accused, Hafiz Abdullah Malik, alleging that the appellant was working as Over Ground Worker. He has placed reliance upon the judgment of the Co-ordinate Bench of this Court in case, titled, **Shabnam Akhter vs. U. T. of J&K, numbered as CrI A(D) No. 37/2025 dated 12.02.2026.**
5. Mr. Mohsin Qadiri, learned Sr. AAG has submitted that except the disclosure statement made by the accused-Hafiz Abdullah Malik, there is no other evidence against the appellant, but as the appellant has been charged for the commission of offences punishable under Sections 39



of the Act, therefore, in view of the bar contained in Section 43-D (5) of the Act, the bail cannot be granted to the appellant.

6. Heard and perused the record including the trial court record.
7. The record depicts that the appellant has been arrayed as accused No. 2 in charge sheet, titled, “U. T. of J&K vs Hafiz Abdullah Malik and others” only on the basis of the statement made by accused No. 1, Hafiz Abdullah Malik, wherein he has stated that the appellant was working as Over Ground Worker. There is no recovery of any incriminating material from the appellant.
8. The appellant was arrested on 17.11.2021 on the basis of the disclosure statement made by the accused Hafiz Abdullah Malik on 08.11.2021 and he has been in custody ever since.
9. In **National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1**, it has been held that the Court must assess whether there are reasonable grounds for believing that the accusations are *prima facie* true, based on the totality of the material. In the instant case, except the disclosure statement made by the co-accused, no material has been brought to the notice of this Court incriminating to the appellant.
10. The Hon’ble Apex Court in **Union of India v. K. A. Najeeb, (2021) 3 SCC 713**, has observed that the prolonged incarceration and the unlikelihood of an early conclusion of trial are relevant considerations in appropriate cases.



11. Over the course of more than four years, the prosecution has produced only 13 out of 30 cited witnesses, highlighting the slow progress of the trial. Though Section 43-D (5) of the Act provides stringent condition for granting bail where the accused is arrested for the commission of offences punishable under Chapters IV and VI of the Act, but in view of the only material against the appellant in the form of disclosure statement made by the accused Hafiz Abdullah Malik, we are of the considered view that the appellant has successfully crossed the hurdle of 43-D(5) of the Act. No material has been brought to our notice that the release of the appellant will hamper the trial or the appellant would indulge in influencing the witnesses.
12. Accordingly, we allow the present appeal and set aside order dated 20.02.2025, impugned in this appeal. The appellant shall be released on bail, subject to the following conditions:
- (i) that he shall furnish two solvent sureties for an amount of Rs. 1,00,000/ each, to the satisfaction of the Trial Court and personal bond of like amount
 - (ii) that he shall appear before the Trial Court on each and every date of hearing and shall not leave the territorial jurisdiction of the Union Territory of Jammu and Kashmir without prior permission of the Trial Court;
 - (iii) that he shall not indulge in any offence similar to the one for which he stands charged.



(iv) That he shall not contact any of the prosecution witness physically or through any other mode.

13. The appeal stands **disposed of** accordingly. Copy of the order be sent to the Trial Court for compliance.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Jammu
07.05.2026
Rakesh PS

Whether the order is speaking
Whether the order is reportable

Yes/No
Yes/No

