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

Reserved on: 24.04.2026
Pronounced on: 30.04.2026

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

Bail App No.05/2026

MOHAMMAD IQBAL WANI

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. Mir Umar, Advocate.

Vs.

UT OF J&K & ANR.

...RESPONDENT(S)

Through: - Mr. Ilyas Laway, GA.

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

JUDGMENT

1) The petitioner, through the medium of present petition, has invoked jurisdiction of this Court under Section 483 of BNSS seeking bail in a case arising out of FIR No.126/2025 for offences under Section 318(4), 351(2) and 111 of BNS registered with Police Station, Anantnag, which is stated to be pending before the Court of learned Principal Sessions Judge, Anantnag (hereinafter referred to as "the trial court").

2) Before coming to the grounds on which the petitioner has sought bail, it would be apt to briefly narrate the facts leading to the filing of the charge sheet before the learned trial court.

3) On 13.06.2025, Police Station, Anantnag, received a written complaint submitted by one Tilak Raj, in which he alleged that he happens to be the husband of Sapna Devi, the licence holder of NTPF Forest Division, Kishtwar, regarding sale and purchase of herbal material. According to the complainant, the petitioner along with co-accused Tasaduq Hussain Dar and Mujeeb Ahmad Koka, entered into an agreement with the proprietor, namely, Sapna Devi, in the month of September, 2024, for selling Garlic (Lahsun) and received an amount of Rs.1,78,000/ as advance from the complainant against which they agreed to sell the material to the complainant withing a period of two days. However, the petitioner and the co-accused did not deliver the material to the complainant and demanded extra payment, whereafter the complainant paid a sum of Rs.56.00 lakhs to the accused. The complainant approached the accused persons time and again but they did not deliver the material and ultimately the accused persons refused to deliver the material or to return the money which compelled the complainant to approach the police.

4) On the basis of the aforesaid complaint, FIR No.126/2025 for offences under Section 318(4), 351(2) of

BNS was registered at Police Station, Anantnag and investigation was set into motion. During the course of investigation, the statement of the complainant under Section 180 of BNSS was recorded and subsequently his statement under Section 183 of BNSS was also recorded before the Magistrate. In his statement he alleged that the accused persons jointly executed an agreement with him for sale of wild garlic and accused Tasaduq Hussain Dar sent him a video of wild garlic with a view of lure him to pay more money. According to the complainant, he paid an amount of Rs.55.80 lakhs to the accused persons through bank transfers as well as in cash for purchase of wild garlic but they cheated him and fraudulently grabbed his money without supplying the wild garlic. It was also found that the accused persons are not authorized or licensed to sell or purchase the wild garlic, which came to the knowledge of the complainant at a later stage.

5) During the course of investigation, statements of other witnesses were also recorded and the material documents were seized. The bank details of the accused persons and the complainant were collected and analyzed. It was revealed that the complainant had transferred a total amount of Rs.34,16,995/ from different bank accounts into the accounts of accused persons. The complainant also produced a handwritten cash receipt issued by accused Tasaduq Hussain Dar, whereby he had acknowledged receipt of an amount of Rs.13,50,000/. As per opinion of the Forensic Science Laboratory, the said receipt had been executed by accused Tasaduq Hussain Dar. It was found that the accused persons had intention to cheat the complainant from the very beginning as they did not possess any license or permission from the Forest Department for procurement of wild garlic, which was confirmed by the Divisional Forest Officer, Anantnag.

6) According to the Investigating Agency, it was found that the accused persons deliberately floated multiple firms under different names as a pre-planned modus operandi to cheat and defraud innocent persons by inducing them to invest money on the pretext of sale and purchase of land, precious stones, forest produce and other commodities. Call detail records of the accused persons were also collected and it was found that all the three accused persons were frequently in contact with each other which shows that they were part of a criminal syndicate. It was also found during investigation that the accused persons had victimized many more people which depicts their continued criminal behaviour and, therefore, Sections 61 and 111 of BNS were also invoked in the instant case. The petitioner was arrested on 07.08.2025.

7) During investigation, transaction statements of all the linked accounts of the accused persons were obtained and it was found that there are transactions worth crores of rupees *inter se* between the accused persons. It has been alleged that these *inter se* transactions indicate that the accused persons were acting as a syndicate for commission of offence of cheating as the accused persons, during questioning, failed to provide any plausible explanation or produce any relevant documents to justify cash transactions. According to the Investigating Agency, the cash transactions between the accused persons are proceeds of the crime.

8) It was found that the petitioner had acquired immovable property without any verifiable source of income, which, according to the Investigating Agency, shows that he had acquired assets through fraudulent means. It was also found during investigation of the case, that the petitioner and co-accused had operated as an organized criminal syndicate to defraud the complainant and similar other victims.

9) After investigation of the case, the charge sheet was produced before the Chief Judicial Magistrate, Anantnag.

However, investigation in the case is being continued even after filing of the charge sheet as certain other persons are involved in the crime. After investigation of the case offences under Section 61, 111, 318(4), 351(2) of BNS stand established against the petitioner and the two co-accused. The case is presently pending before the trial court.

10) From the perusal of the trial court record, it appears that vide order dated 24.09.2025, application of the petitioner and other co-accused for grant of bail stands rejected on several grounds including the ground that investigation of the case at the relevant time was still going on and the charge sheet had not been filed before the court. The trial court record further reveals that in terms of order dated 31.03.2026, charges offences 61(2)(a), 111(2)(b), 111(3), 111(4), 111(6), 111(7), 318(3)(4), 351(2)(3) of BNS stand framed against the petitioner and the co-accused and the trial of the case is going on.

11) The petitioner has sought bail on the grounds that the complainant has executed agreement dated 19.11.2024, in which he has declared that there is nothing outstanding against the petitioner. It has been further contended that the house constructed by the petitioner has been built up out of the money borrowed from J&K Bank Branch Peer Takiya, Anantnag, and not out of any proceeds of the crime. It has been further contended that even if the allegations made in the complaint are taken to be true, still then it represents a civil dispute which has been given a criminal colour by the complainant. It has been also contended that the Investigation Agency has un-necessarily invoked offence under Section 111 of BNS without there being involvement of the petitioner in any continuing unlawful activity, singly or jointly or as a member of an organized crime syndicate. It has been contended that in the absence of more than one charge sheets having been filed against the petitioner during the past ten years, the ingredients of offence under Section 111 of BNS are not made out against the petitioner. It has also been contended that investigation of the case is complete and the charge sheet has already been filed against the petitioner, as such, depriving him of his liberty would amount to pre-trial punishment, which is impermissible in law.

12) The bail application has been contested by the respondent Investigating Agency by filing its reply to the same, in which it has been contended that the conduct of the accused is marked by coercion and intimidation of victims which indicates that there is a strong likelihood that in case the petitioner is granted bail, he may threaten or influence the witnesses. It has been further contended that there is sufficient material on the record of the charge sheet to indicate involvement of the petitioner in the alleged crime which is very heinous in nature. It has been also contended that further investigation of the case is still going on and in case the petitioner is admitted to bail, it may adversely impact further course of investigation.

13) I have heard learned counsel for the parties and perused the material on record including the trial court record.

14) It is by now a settled position of law that while considering the bail application of an accused, the following factors are required to be kept in mind by the Court:

> *(i). The nature of the alleged offence, the nature of accusation and severity of punishment in case of a conviction;*
>
> *(ii) Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses'*
>
> *(ii). The possibility of securing presence of the accused at the trial or the likelihood of the accused fleeing from justice;*
>
> *(iv). The antecedents and circumstances which are peculiar to the accused;*
>
> *(v). Whether prima facie the ingredients of the offence are made out on the basis of the material collected by the Investigating Agency;*
>
> *(vi) The interests of the public or the State and similar other considerations.*

15) The aforesaid principles have evolved from the various judicial precedents laid down by the Supreme Court in a number of cases including **Prahlad Singh Bhatti vs. NCT of Delhi,** (2001) 9 SCC 280, **Ram Govind Upadhyay vs. Sudarshan Singh,** (2002) 3 SCC 598, **State of UP vs. Amarmani Tripathi,** (2005) 8 SCC 21, **Prasanta Kumar Sarkar vs. Ashish Chatterji,** (2010) 14 SCC 496, **Sanjay Chandra vs. CBI,** (2012) 1 SCC 40, and **P. Chidambaram vs. CBI,** (2020) 13 SCC 791.

16) Coming to the facts of the present case, the petitioner is facing trial for offences under offences 61(2)(a), 111(2)(b), 111(3), 111(4), 111(6), 111(7), 318(3)(4), 351(2)(3) of BNS. Excepting offences under Section 111(2)(b), 111(3), 111(4), 111(6) and 111(7), all other offences carries a maximum punishment upto seven years imprisonment. Even though offence under Section 111 BNS carry a punishment of life imprisonment with a minimum punishment of 3/5 years along with fine, nonetheless there is no statutory or legal bar in enlarging an accused on bail facing trial for such offences. The chargesheet against the petitioner has already been filed and the trial is going on. Therefore, in normal circumstances there should be no difficulty in acceding to the request of the petitioner for grant of bail. However, learned GA appearing on behalf of the respondents, has vehemently contended that as per the antecedents of the petitioner, he is a member of organized criminal syndicate and the further investigation of the case is still going on, as such, he does not deserve the concession of bail. It has been contended that the petitioner is involved in an economic offence of a huge magnitude and he has accumulated assets out of proceeds of the crime, therefore, he does not deserve the concession of bail.

17) So far as the contention of the respondents that the petitioner is involved in an economic offence, is concerned, in this regard the Supreme Court has, in the case of **Satender Kumar Antil vs Central Bureau Of Investigation,** (2022) 10 SCC 51, after relying upon the observations made by the said Court **P. Chidambaram's** case (supra), held that all economic offences cannot be categorized into one group and deny bail on that basis. It has been laid down that gravity of the offence, the object of the Special Act and the attending circumstances are a few of the factors to be taken note of along with the period of sentence. Thus, consideration will have to be on case-to-case basis on the facts involved in a particular case. Merely because the petitioner in the present case is involved in an economic offence would by itself be not a reason sufficient to deny him the concession of bail.

18) So far as involvement of the petitioner in offence as defined under Section 111 of BNS is concerned, learned counsel for the petitioner has contended that as per the prosecution case, two charge sheets, in which cognizance has been taken by the competent court, are pending against the petitioner. One of these charge sheets arises out of FIR No.16/2020 of Police Station Achabal, that was filed before the competent court on 16.09.2023 whereas other case arises out of FIR No.24/2005 for offence under Section 379 of RPC registered with Police Station, M. R. Ganj Srinagar and the charge sheet in the said cases has been filed on 25.03.2005 before the Court of City Magistrate, Srinagar. It has been contended that as per Explanation-II to sub-section (1) of Section 111 of BNS, continued unlawful activity is constituted if more than one charge sheet have been filed before the competent court within preceding period of ten years but in the instant case the charge sheet arising out of FIR No.24/2005 has been filed more than 20 years back, therefore, the ingredients of offence under Section 111 of BNS are not made out against the petitioner. It has been contended that the learned trial court has fallen into error while framing charge for offence under Section 111 of BNS against the petitioner.

19) The issue, whether offence under Section 111 of BNS is made out against the petitioner, is subject matter of determination in other petitions filed by co-accused seeking quashment of the order framing charges. Therefore, this Court would not like to express any opinion on this issue. However, the aforesaid contention of the petitioner is being taken note of for the limited purpose of deciding this bail application. Prima facie, the aforesaid contention appears to be full of merit. Thus, even on merits, there appears to be a *prima facie* case for extending the concession of bail in favour of the petitioner.

20) Apart from the above, merely because the petitioner is involved in a case which carries maximum punishment of life imprisonment would not disentitle him from concession of bail. No doubt, the charge framed against the petitioner is grave and serious in nature but the Supreme Court has time and again emphasized the principle that "bail is the rule and jail is the exception". Reliance in this regard can be placed on the ratio laid down by the Supreme Court in the cases of **Manish Sisodia vs. Directorate of Enforcement,** 2024 SCC OnLine SC 1920 and **Jalaluddin Khan vs. Union of India,** 2024 SCC OnLine SC 1945.

21) Thus, merely because the petitioner has been charged for an offence which carries maximum punishment upto life imprisonment, he cannot be denied the concession bail, particularly when the chargesheet stands produced against him and he has spent more than eight months in jail. Denying the concession of bail to the petitioner in a case of present nature may not be a proper exercise of discretion vested with this Court under Section 483 of BNSS as the same would militate against the principle that “bail is the rule and jail is exception”.

22) So far contention of the respondents that further investigation of the case is in progress, is concerned, in this regard it is to be noted that further investigation of the case relates to involvement of other accused in the alleged crime. So far as investigation with regard to role of the petitioner is concerned, the same is already complete. Therefore, further investigation of the case cannot be a ground to deny the concession of bail to the petitioner.

23) In view of what has been discussed hereinabove, the present application of the petitioner is allowed and he is admitted to bail subject to the following conditions:

(i) *That he shall furnish personal bond in the amount of Rs.1.00 lac (rupees one lac) with two sureties of the like amount to the satisfaction of the learned trial court;*

(ii) *That he shall appear before the learned trial court on each and every date of hearing till conclusion of the trial.*

(iii) That he shall not leave the territorial limits of the Union Territory of J&K without prior permission of the learned trial court;

(iv) That he shall not intimidate or tamper with prosecution witnesses/evidence.

24) Observations made hereinabove shall remain confined to the decision of the instant application only and shall not be construed as expression of opinion on the merits of the case.

(v) Bail application shall stand disposed of

(SANJAY DHAR)
JUDGE

Srinagar
30.04.2026
"Bhat Altaf-Secretary"

*Whether the **Judgment** is speaking:* ***Yes***
*Whether the **judgment** is reportable:* ***Yes***