

S. No.

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

Reserved on: 24.12.2025
Pronounced on: 16.04.2026
Uploaded on: 17.04.2026

Whether the operative part or full
judgment is pronounced: Full

Bail App No. 316/2025

**Smanla Dorje Nurboo, aged 36 years
S/o Sh. Tsering Dorje,
R/o Likir, Leh
Presently lodged in District Jail Leh.**

.....Petitioner(s)

Through: Mr. A P Singh, Advocate
Ms. Deachan Angmo, Advocate
Mr. Nikhil Verma, Advocate

**Union Territory of Ladakh,
Through SHO Police Station, Leh**

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, CGSC
Mr. Rishabh Shukla, IPS Incharge SIT (I.O)

Bail App No. 320/2025

**Deldan Namgail, aged 47 years,
S/o Sh. Lobzang Rinchen
R/o Kubet, Nubra
Presently lodged in District Jail Leh.**

...Petitioner(s)

Through: Mr. A P Singh, Advocate
Ms. Deachan Angmo, Advocate
Mr. Nikhil Verma, Advocate

Vs

**Union Territory of Ladakh,
Through SHO Police Station, Leh**

....Respondent(s)

Through: Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, CGSC
Mr. Rishabh Shukla, IPS Incharge SIT (I.O)

Coram: HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGMENT

01. Through the medium of instant successive petitions filed in terms of the provisions of Section 483 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as BNSS for short), the petitioners have sought bail in case FIR No. 144/2025 dated 25.09.2025 of Police Station, Leh, in their favour on the grounds *inter alia* that they are innocent and have not committed the alleged offences under the case FIR. That they have been falsely and frivolously implicated in the case FIR on the basis of political rivalry. That their plea regarding their innocence has by and large remained unrebutted before the Courts below. That the alleged statement/press conference attributed to the Petitioner No.1-Smanla Dorje Nurboo was made by him in good faith as a public representative concerning the health conditions of the persons who were on the hunger strike and were belonging to his constituency.

That petitioner No.1 was in hospital immediately after the alleged press conference made in the office of the Congress Party. That petitioner No.1 continued to be in hospital attending to the critical condition of the persons who were on hunger strike and continued to be with them on the fateful day of 24.09.2025. That the youth of Apex body as well as the religious organizations viz Shia, Sunni and Buddhist religious organizations had given a call in the late evening of 23.09.2025 for a bandh on 24.09.2025. That petitioner No.1 was not part of any Apex body of youth or of religious organizations. That the important factual aspect to the effect that Apex body which earlier comprised of all organizations of the

Ladakh including members of political parties was re-constituted and members of political parties particularly of congress were removed as members of a political Apex body to ensure that composition and nature of the Apex body remains a political was known to the police concerned. That unfortunate incident of 24.09.2025 thus was wholly unrelated to the alleged press conference of the petitioner No.1 dated 23.09.2025.

That even if the statement/press conference as alleged is supposed to have been so made, yet a cursory reading and understanding of the same would indicate that there was nothing suggestive that the said conference/statement was aimed at achieving any illegal consequences. That the import and purport of the alleged statement/press conference of the petitioner No.1 viewed from any angle was to invite the attention of the administration to the issue relating to the conditions of the persons of his constituency who were on hunger strike. That FIR No. 142/2025 was registered with the Police Station, Leh under Sections 192, 351(2) BNS concerning the said conference. That since the offences alleged in case FIR No. 142/2025 of Police Station Leh were bailable, therefore, the mischievous object of arresting petitioner No.1 on false grounds, was achieved by showing his involvement in case FIR No. 144/2025. That the doubtful issue regarding applicability of Section 109 BNS was itself appreciated by the learned Principal Sessions Judge, Leh while granting bail to co-accused persons in the case FIR. That the allegations made against three co-accused in the case FIR in question, who were already granted bail by the learned Sessions Judge, Leh are almost identical. That

petitioner No.1 was not present on the fateful day of 24.09.2025 either on or around the place of occurrence as he was in hospital attending the deteriorating condition of the persons on hunger strike. That the petitioner has been in custody in the case FIR since 27.09.2025. That the petitioner No.1 has been suffering incarceration in violation of his fundamental right to life and personal liberty and accordingly prays for concession of bail in his favour on the ground of parity.

That there is no question of the petitioners' misusing the concession of bail by tampering with the prosecution evidence or by absconding at the trial. That the seriousness of the allegations is needed to be considered in respect of the alleged accusation and cannot be considered in vacuum. That the object of the bail is to secure the presence of the accused person at his trial by reasonable amount of his bail. The object of bail is neither punitive nor preventive. That the courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. That petitioner No.1 shall abide by any conditions *inter alia* to the furnishing of bail bonds that may be imposed by this Court.

That petitioner No.2 is a resident of Kubet, Nubra, Leh and has been a member of a Legislative Assembly as well. That he thus has a duty towards the society, of course dischargeable within the parameters of law.

That in UT of Ladakh, over a period of time, there has been a cry by the people for safeguarding their rights as citizens belonging to an area which is distinguishable by its geographical location and cultural heritage.

That the public was making demands within the parameters of law and the constitution. That the demands made by the people were absolutely patriotic in their reach as also in their manifestations. That raising a grievance and making a peaceful protest is the very essence and spirit of various important fundamental rights guaranteed under the Constitution.

That unfortunately, a protest which was absolutely peaceful in nature, was mishandled and allowed to become an unfortunate incident of 24.09.2025 leading to the registration of the case FIR No. 144/2025 of Police Station, Leh dated 24.09.2025.

That petitioner No.2 has been arrested on 26.09.2025 when he was on his way to surrender in the Court. That the petitioner No.2 is innocent and has never ever made any violent response to anything in life. That he being a devotee of Buddhism is non-violent in his deeds.

That the allegations of the police that petitioner No.2 was seen in the CCTV footage installed outside Tata showroom adjacent to the BJP office main gate where he was seen pelting stones at the CCTV camera and thereby deliberately damaging it, is totally a lie. That he shall abide by any conditions that may be imposed by this Court.

02. The respondent/UT of Ladakh through Police Station, Leh has resisted bail applications on the ground that petitioner No. 1 Smanla Dorje Nurboo is a very influential person and was sitting councilor of 6th LADHC Leh from Saspol constituency, when petitioner No.2 is a former MLA of the erstwhile State of J&K having considerable influence in both the Union Territories particularly in the UT of Ladakh. That the release of the

petitioners/accused at this stage is likely to affect fair investigation in the case FIR. That the petitioners/accused by misusing their positions as a councilor and former MLA respectively have committed grave and very serious offences, as such, do not deserve the concession of bail. That the investigation so far has revealed that the petitioner No.1 has played a pivotal role in the commission of offences and wantonly gave provocation with an intention to cause riot. That unruly mob executed provocative act of the petitioners/accused resulting in the commission of heinous offences. That the abetment, incitement and provocation made by the petitioner No.1/accused has led to brutal rioting at a massive scale which has further led to mass damage to public as well as private property. That several police and CRPF personnel have been brutally attacked and four people have died due to the actions of the members of the mob. That the government and private vehicles have been blatantly burnt and the mob has committed arson on several public properties. That several members of the unlawful assembly who furthered the criminal conspiracy are still unidentified and as such the release of the petitioners/accused is likely to affect the fair and logical investigation of the case. That the investigation so far has revealed that petitioner No.1 was present near the spot of occurrence when the petitioner No.2 was an active participant in the violation. That the release of the petitioners/accused at this critical initial stage is likely to enable them to tamper with the prosecution evidence.,

That petitioner No.1/accused Smanla Dorje Nurboo the then sitting councilor of 6th LADHC, Leh provoked the youth just the previous

day of the occurrence through a press conference with other members of the congress followed by flash of other videos on the social media. That he being a former elected representative and law knowing influential political office holder deliberately misused his social and political standing to instigate and provoke the public to commit acts of violence, including stone pelting, arson and destruction of public and private properties. The investigation has revealed the accused's presence near the places of occurrence on 24.09.2025 and that they actively incited the others to commit criminal acts which resulted in widespread law and order disruption.

That during the investigation of the case, many co-accused persons revealed that they joined the protest on 24.09.2025 after witnessing the press conference of Smanla Dorje Nurboo and the press conference of the Apex youth and religious youth which were given on 23.09.2029, urging everyone especially the youth to join the protest on 24.09.2025 which directly demonstrates that such statements and threats were part of a larger conspiracy that served as catalyst for the violent acts that followed. That the petitioner/accused No.1 evaded his arrest for three days and finally surrendered before the Court at Leh on 27.09.2025. That having regard to the social and political influence of the petitioner No.1 there is every reason to believe that if released on bail, he may obstruct the investigation and continue to threaten the public order. That the petitioner/accused No.1 Smanla Dorje Nurboo is also involved in case FIR No. 142/2025 under Sections 192, 351(2) BNS which came to be registered upon his

statement/press conference made by him on 23.09.2025 whereby he incited and provoked the people at large resulting in the unfortunate incident of 24.09.2025. That the petitioner/accused Smanla Dorje Nurboo is one of the key players behind the entire crime committed on the fateful day and his release at this crucial stage of investigation will jeopardize the entire process of investigation which relates to violent act in which four persons died and huge damage was caused to the government and public properties.

- 03.** That petitioner/accused No.2 who is an Ex-MLA and a person who holds an important position in the society was expected to serve as a role model and visionary for the younger generation and to guide them towards development, moral values, modern education and progress, but he himself indulged into the criminal acts which is prejudicial to public peace, security and the maintenance of public order in the region. That petitioner No.2 by misusing his position as Ex-MLA has committed grave and very serious offences which are highly condemnable and as such, does not deserve any leniency by way of concession of bail. That during investigation of the case it surfaced that petitioner No.2 Deldan Namgail was clearly seen in CCTV footage, videos and photographic evidence actively participating in the protest held on 24.09.2025. That he was observed continuously provoking the mob by raising slogans and directing others to move towards the LAHDC Council gate. That the photo and videos evidence depicts him actively leading and instigating the mob, pelting stones at the LAHDC Council main gate, BJP office and at the office buildings of Secretary Education/Director Finance and Additional PCCF located near the LAHDC

Council office. That he misused his influence, social and political standing to instigate others to indulge in acts of stone pelting, arson, and violence against public property and government establishments. That the said accused was clearly captured in the CCTV camera installed outside the Tata showroom adjacent to the BJP office main gate, wherein he was seen pelting stones at the CCTV camera and thereby deliberately damaging it. That after successfully damaging the CCTV camera, he was seen celebrating by dancing, clearly demonstrating his willful intention to destroy evidence related to the incident and to obstruct the course of investigation. That the said act of the accused amounts to tampering with crucial electronic evidence of the case. That the release of the said accused at this stage is likely to tamper with the prosecution evidence.

04. The Court has heard the learned counsel for the parties who almost reiterated their stands respectively taken in their pleadings i.e the applications and the memos of objections.
05. The learned counsel for the petitioners/accused during his arguments *inter alia* contended that the petitioners have been falsely and frivolously implicated in the case FIR on the basis of political rivalry to wreck vengeance. He submitted that the statement/alleged press conference dated 23.09.2025 attributed to petitioner No.1, was made by him in good faith without any intention of commission of any illegal act by him or anyone else. That the said statement/alleged press conference was made only in relation to the persons of the locality who were on hunger strike in connection with genuine demands falling within the parameters of law. He

contended that case FIR No. 142/2025 came to be registered with Police Station, Leh on 23.09.2025 in the backdrop of the said statement of the petitioner No.1 and as such, the happening of the second day when he was not at all present at any site of the alleged occurrence could not have been connected to the previous day's statement of the petitioner No.1. He further submitted that there was no proximity between the previous day's statement/alleged press conference made by the petitioner No.1 in good faith concerning the health issue of the persons on hunger strike and the next day's violent incident when he was not at all present at any site of the occurrence. The learned counsel submitted that petitioner No.1 as a responsible person was on the previous day attending the hospital where some of the hunger strikers who had fallen ill and hailing from his area were admitted.

- 06.** Learned counsel for the petitioners very vehemently submitted that in the alleged statement/press conference of 23.09.2025 he uttered the words and made the statements regarding any consequential action by his ownself individually and he has nowhere in his statement as projected and putforward by the investigation made any instigating or inciting remark urging the public in general to come to violence.
- 07.** The learned counsel submitted that petitioner No.1 has been suffering detention in the case since last about seven months despite being innocent and as such his fundamental right guaranteed to him under Article 21 of the Constitution stands denied to him. The learned counsel submitted that the health of the petitioner No.1 has deteriorated in confinement and besides

his family has also suffered on account of his continuous detention.

08. Regarding petitioner No.2, the learned counsel submitted that he also was falsely and frivolously implicated in the case FIR on account of political rivalry. The learned counsel submitted that he is a former MLA thus being a respectable and reputed person of the locality commanding great respect in the society who has never committed the acts alleged.

The learned counsel further submitted that the investigation in the case FIR against the present petitioners is complete as the I.O of the case has presented a final report/challan in the case FIR against nine accused persons including the present petitioners. He contended that there is no question of petitioners' interfering in the investigation of the case.

The learned counsel further contended that the present petitioners/accused are not alleged to have committed any offence carrying the sentence of death or of life imprisonment in alternative, thus attracting the bar for grant of bail in terms of Section 480(1)(i) BNSS. The learned counsel submitted that the petitioners/accused are not involved in any offence of murder punishable under Section 103(1) BNS or an offence of culpable homicide not amounting to murder punishable under Section 105 BNS. The learned counsel further contended that there also appear no reasonable grounds of the involvement of the petitioners/accused in the commission of offences leveled against them, i.e, under Sections 3(5), 49, 50, 51, 52, 53, 54, 55, 57, 61(2) of Bhartiya Nyaya Sanhita, 2023 r/w 109, 115(2), 117(2), 118(1), 118(2), 121(1), 121(2), 125, 132, 135, 152, 189(2), 189(3), 189(4), 189(5), 190, 191(2) 191(3), 192, 195, 238(b), 303(2),

309(4), 309(6), 324(2), 324(3), 324(4), 324(5), 324(6), 326(e), 326(f), 326(g) & 332(b) of Bhartiya Nyaya Sanhita, 2023, 3(1).4 of Prevention of Damage to Public Property Act, 1984, And 25(1AB) of the Arms Act, 1959 and more especially the offence punishable under Sections 50 and 51 of the BNS.

The learned counsel further contended that the personal liberty of the petitioners stands deprived illegally on account of their continued incarceration. He further contended that with the presentation of the final report/charge-sheet in the case FIR in the Court, there is no question of petitioners' interference in the process of investigation on account of their influential social and political positions.

The learned counsel further contended that the Court of Principal Sessions Judge, Leh has already granted bail to three other co-accused namely (1) Rigzin Dorjey, (2) Jigmet Rafstan and (3) Imtiaz Hussain on the similar allegations and as such, the parity demands the grant of bail to the petitioners.

The learned counsel further contended that it is well settled principle of law that bail is a rule and its denial an exception especially in cases which do not carry sentence of death or imprisonment for life in alternative and where further there is no material on record that the accused will misuse the concession of bail by tampering with the prosecution evidence or absconding at the trial. He further contended that the petitioners have no criminal antecedents nor have ever been convicted of any offence. He contended that the unfortunate incident that took place on

24.09.2025, was never imagined and the same unfortunately did occur due to mis-management of the protesting mob.

09. *Per Contra*, the learned counsel for the respondents very vehemently submitted that the petitioners/accused are involved in the most heinous and non-bailable offences punishable under Sections 3(5), 49, 50, 51, 52, 53, 54, 55, 57, 61(2) of Bhartiya Nyaya Sanhita, 2023 r/w 109, 115(2), 117(2), 118(1), 118(2), 121(1), 121(2), 125, 132, 135, 152, 189(2), 189(3), 189(4), 189(5), 190, 191(2) 191(3), 192, 195, 238(b), 303(2), 309(4), 309(6), 324(2), 324(3), 324(4), 324(5), 324(6), 326(e), 326(f), 326(g) & 332(b) of Bhartiya Nyaya Sanhita, 2023, 3(1).4 of Prevention of Damage to Public Property Act, 1984, And 25(1AB) of the Arms Act, 1959 and as such, they do not deserve the concession of bail.

The learned counsels contended that the unfortunate incident of 24.09.2025 occurred as a result of the instigation and incitement/provocation that was made in the form of a press conference by the petitioner No.1 Smanla Dorgey Nurboo on 23.09.2025 followed by flashing of videos on the social media. The learned counsel contended that petitioner No.2-Deldan Namgail was captured by the CCTV camera while doing violence on front lines on the incident day who attempted to damage the CCTV camera so as to cause disappearance of the evidence against him.

The learned counsel contended that a number of co-accused during investigation of the case stated that they were instigated and provoked by the press conference of the petitioner No.1 which he made a day before the

occurrence and came to be shared on social media.

The learned counsel contended that since the petitioners are influential persons as being the then sitting councilor and a former MLA, as such, there is every apprehension of their misusing the concession of bail by threatening and intimidating the prosecution witnesses so as to keep them away from disclosing the real facts at the trial of the case.

The learned counsel for the respondents further contended that in view of the overall consideration of the guiding factors being evolved by the Hon'ble Apex Court and various other High Courts of the Country including this Court viz seriousness of the crime, nature of evidence, character and antecedents, reasonable apprehension of accused's misusing the concession of bail by tampering with the evidence, impact of the crime on society and the State etc etc, the petitioners do not deserve the concession of bail for being involved in commission of heinous offences.

The learned counsel submitted that on 24.09.2025, Police Station, Leh received a docket from the Incharge Police Post Housing Colony, Leh informing that since the past about 14 days, a hunger strike was being carried out at NDS Park near the General Post Office, Leh. That on 23.09.2025, through social media, the Youth Wing of the Apex Body had circulated a call asking the public of Leh to assemble at NDS Park on the said date. That in response, a large number of people, particularly youth from different parts of Leh, began gathering at the venue on 24.09.2025.

That during the course of this assembly, certain miscreant youths, acting in furtherance of a deliberate conspiracy, instigated those present

and converted the hunger strike into a violent procession. That the gathering spilled out onto the road, and the mob began pelting stones at the police and CRPF personnel deployed there, causing injuries to several officers and endangering their lives. That the mob then directed their violence towards the office of the Ladakh Autonomous Hill Development Council (LAHDC), Leh, and engaged in stone pelting at the premises. That with great effort, the police diverted the mob towards Housing Colony, but in the meantime thousands of youths armed with rods and sticks joined the procession.

That when the mob reached near the BJP office, they launched a violent attack on the police personnel posted there, set ablaze a police vehicle bearing registration No. LA-02/0746 deployed for the security of the BJP office, and reduced it to ashes. That despite resistance, the mob continued its violent attack upon the police with intent to kill, as a result of which several police officials sustained grievous injuries and had to be shifted to the District Hospital, Leh. That one CRPF personnel deployed at the spot was also attacked and assaulted, and his AK-47 magazine containing 30 live cartridges was forcibly snatched away by the miscreants. That thereafter, the mob forcibly entered the BJP office, setting it on fire along with several private vehicles and the official vehicle of the Dy. SP D.A.R., Leh, bearing registration No. LA02/2153.

That after the mob was initially dispersed, they regrouped into a procession and once again marched towards the LAHDC Leh office, where they resumed their attack on the police, broke into the compound wall of

the office, and set fire to the Meeting Hall. That additional police forces had to be summoned, and it was only after great difficulty that the miscreants finally dispersed. That due to these violent acts, 38 police personnel and 57 CRPF personnel suffered injuries, and substantial damage was caused to government property, including the BJP building and official vehicles. That the investigation has established that these criminal acts were carried out pursuant to instigation made through social media and criminal conspiracy. That since the above-mentioned acts committed constituted cognizable offences punishable under Sections 189, 191(2), 191(3), 190, 115(2), 118(1), 118(2), 326, 324, 326(e), 326(f), 326(g), 309, 109, 117(2), 125, 121(1), 61(2) of the Bharatiya Nyaya Sanhita, 2023, therefore FIR No 0144/2025 was registered at Police Station, Leh.

10. Keeping in view the perusal of the instant bail applications, the objections filed in rebuttal and the consideration of the rival arguments advanced on both the sides, the Court in the facts and circumstances of the case is of the opinion that it may meet the ends of justice in case the petitioners/accused namely, **Smanla Dorje Nurboo**, S/o Tsering Dorje, R/o Likir, Leh and **Deldan Namgail**, S/o Sh. Lobzang Rinchen, R/o Kubet, Nubra are admitted to bail in case FIR No. 144/2025 of Police Station, Leh in respect of the offences under Sections 3(5), 49, 50, 51, 52, 53, 54, 55, 57, 61(2) of Bhartiya Nyaya Sanhita, 2023 r/w 109, 115(2), 117(2), 118(1), 118(2), 121(1), 121(2), 125, 132, 135, 152, 189(2), 189(3), 189(4), 189(5), 190, 191(2) 191(3), 192, 195, 238(b), 303(2), 309(4), 309(6), 324(2), 324(3), 324(4), 324(5), 324(6), 326(e), 326(f), 326(g) & 332(b) of Bhartiya Nyaya

Sanhita, 2023, 3(1).4 of Prevention of Damage to Public Property Act, 1984, And 25(1AB) of the Arms Act, 1959 only, subject to some reasonable terms and conditions so that the further investigation in the case FIR reported to be underway goes on smoothly with the smooth commencement of trial of the final report/charge-sheet.

11. The petitioners/accused have been reportedly in custody in the case FIR in question since last about seven months. The Investigating Officer of the case appeared at the final hearing of the instant bail petitions and submitted that a preliminary charge sheet is going to be produced against nine accused persons in the case FIR including the present petitioners which is complete in all respects. The Investigating Officer has furnished a copy of the same for perusal of the Court. It is, however, needful to mention that the charge-sheet/preliminary final report *inter alia* reveals that further investigation in the case FIR is underway.
12. The Court of learned Principal Sessions Judge, Leh has already vide his order dated 04.11.2025 granted bail in favour of some of the co-accused under similar allegations while denying the bail to the present petitioners.
13. The petitioners/accused have not been so far shown involvement in any offence carrying the punishment of death or imprisonment for life in alternative which offences attract the bar in terms of provisions of Section 480(1)(i) BNS. The petitioners/accused are not alleged to have committed the offence of murder or culpable homicide not amounting to murder punishable under Sections 103 and 105 BNS respectively.
14. Admittedly, in case of non-bailable offences which do not carry a sentence

of death or imprisonment for life in alternative, bail is a rule and its denial an exception especially in cases where firstly the custodial questioning of an accused is not imperative for the logical and scientific conclusion of the investigation and secondly where there is nothing on record to show that the accused, if admitted to bail, will misuse the concession by tampering with the prosecution evidence, by non-cooperation and association with the investigating agency and also by absconding at the trial.

15. Apart from the statutory bar, if any, two paramount considerations viz. likelihood of accused fleeing from justice and tampering with the prosecution evidence relate to the ensuring of a fair trial of the case in a court of law. It is essential that due and proper appreciation and weightage should be bestowed on these factors apart from others. The grant of bail or the denial of the same falls within the purview of the judicial discretion meant to be exercised on sound legal principles upon the logical interpretation and application of the same in the given facts and circumstances of the case. The necessary arrests subject to the law of bails as provided under the Code, BNSS and the provisions of different special Legislations are permissible under the Constitution of our Country by way of a reasonable exception to the fundamental right to liberty guaranteed under Article 21 of the Constitution and the mandate of the provisions of Article 22 of the Constitution is meant to be followed upon making any such necessary arrests.
16. In State of Rajasthan Jaipur Vs. Balchand AIR 1977 S.C. 2447. The Hon^{ble} Apex Court has held, "basic rule may perhaps be tersely put as

bail not jail, except where there are circumstances of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating the witnesses and the like, by the petitioner who seeks enlargement on bail from the court.

17. It is also well settled that the bar imposed under section 480 of BNSS on the exercise of the discretion in the matters of bail subject to proviso contained in the section, is confined to the offences carrying a sentence of death or imprisonment for life in alternative and the offences carrying a sentence of imprisonment for life disjunctive of death sentence are exempted from the embargo.

18. No single rule or a golden litmus test is applicable for consideration of a bail application and instead some material principles/guidelines are needed to be kept in mind by the Courts and the Magistrates for consideration of a bail application especially including:-

- i. The judicial discretion must be exercised with the utmost care and circumspection;
- ii. That the Court must duly consider the nature and the circumstances of the case;
- iii. Reasonable apprehension of the witnesses being tampered;
- iv. Investigation being hampered or
- v. The judicial process being impeded or subverted.
- vi. The liberty of an individual must be balanced against the larger interests of the society and the State.
- vii. The court must weigh in the judicial scales, pros and cons varying from case to case. viii. Grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the rule;
- viii. The court at this stage is not conducting a preliminary trial but only seeking whether there is a case to go for trial;
- ix. The nature of the charge is the vital factor, the nature of evidence is also pertinent, the punishment to which the party may be liable also bears upon the matter and the likelihood of the applicant interfering with the witnesses or otherwise polluting the course or justice, has also a bearing on the matter.
- x. The facts and circumstances of the case play a predominant role.

19. The Honb'ble Apex Court in **Gur Bakash Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632** referred to the following extract from the American Jurisprudence having bearing on the subject of bail, "where the grant of bail lies within discretion of the court, granting or denial is regulated to a large extent, by the facts and circumstances of each particular case. Since the object of detention order/imprisonment of the accused is to secure his appearance and submission to jurisdiction and the judgment of the court, the preliminary enquiry is whether a recognizance or bond would yeild that end. It is thus clear that the question whether to grant bail or not, depends for its answer upon a Variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity for justifying the grant or refusal of bail.
20. It has been laid down by the **Hon'ble Supreme Court in Sanjay Chandra vs. Central Bureau of Investigation AIR 20012 SC830** at Para 14 of its Judgment as under:-

14) In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment beings after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship.

From time to time, necessity demands that some un- convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, necessity is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he

should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."

21. The Hon'ble Supreme Court in Dataram Singh vs State of UP and Anr.

2018 3 SCC 22, has held that even if grant or refusal of bail is entirely the discretion of a Judge, such discretion must be exercised in a judicious manner and in a humane way observing as follows:-

"2. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstance of a case.

3. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge-sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure 1973."

22. In *Pankaj Jain vs Union of India and Anr. 2018 5 SCC 743*, the Hon'ble Supreme Court has held that the grant of bail has to be exercised compassionately. Heinousness of crime by itself cannot be the ground to out rightly deny the benefit of bail if there are other overwhelming circumstances justifying grant of bail. The Hon'ble Apex Court in its Judgments cited as *Siddharam Satlingappa Mhetre Vs. State of Maharashtra AIR 2011 SC 312* and *Sushila Aggarwal and Ors. Vs. State (NCT of Delhi) and Anr 2020 SC online 98*, has interpreted law even on the subject of anticipatory bail with a very wide outlook and while interpreting concept of liberty guaranteed under Article 21 of the Constitution of our Country in a flexible and broader sense.

23. The apprehensions of the respondents can be taken care of by imposing reasonable terms and conditions to their enlargement.

24. For the foregoing discussion, the applications are allowed and the petitioners/accused namely **Smanla Dorje Nurboo**, S/o Sh. Tsering Dorje, R/o Likir, Leh and **Deldan Namgail**, S/o Sh. Lobzang Rinchen, R/o Kubet, Nubra are admitted to bail in case FIR No. 144/2025 of Police Station, Leh for the offences under Sections 3(5), 49, 50, 51, 52, 53, 54, 55, 57, 61(2) of *Bhartiya Nyaya Sanhita, 2023* r/w 109, 115(2), 117(2), 118(1), 118(2), 121(1), 121(2), 125, 132, 135, 152, 189(2), 189(3), 189(4), 189(5), 190, 191(2) 191(3), 192, 195, 238(b), 303(2), 309(4), 309(6), 324(2), 324(3), 324(4), 324(5), 324(6), 326(e), 326(f), 326(g) & 332(b) of *Bhartiya Nyaya Sanhita, 2023*, 3(1).4 of *Prevention of Damage to Public Property Act, 1984*, And 25(1AB) of the *Arms Act, 1959* only, subject to their furnishing

surety & personal bonds in the sum of ₹1,00,000/-each to the satisfaction of the learned trial Court and the Superintendent of the Jail concerned, respectively, for assuring the fulfillment of the following conditions.

- i). That the petitioners/accused shall cooperate with the Investigating Agency during the course of further investigation in the case FIR reported to be underway.
- ii). That the petitioners/accused shall remain punctual at the proceedings of the trial of the case unless their personal appearance for any date of hearing is exempted by the learned trial Court on justified reasons.
- iii). The petitioners/accused shall not, directly or indirectly, make any inducement, threat, or promise to any of the prosecution witnesses so as to dissuade them from making true account of the case before the trial court.
- iv) The petitioners/accused shall not repeat the commission of any crime.
- v). The petitioners/accused shall not leave the territory of India without prior permission of the learned trial Court as well as the Investigating officer of the case.

25. The learned trial court shall be fully competent to proceed against the petitioners/accused in terms of the provisions of Sections 491 and 492 of the BNSS, in the event of violation of any of the aforesaid bail conditions.

26. It is needful to clarify that nothing stated in this order shall be construed as any prejudging of or interference with the merits of the case, which shall, be the subject matter of the trial.

27. **Disposed of.**

**(MOHD YOUSUF WANI)
JUDGE**

**JAMMU
16.04.2026
Vijay**

Whether the order is speaking: Yes
Whether the order is reportable: Yes