

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

*Pronounced on: 31.07.2026*

*Uploaded on: 31.07.2026*

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

**Bail App No.18/2026**

**NISAR AHMAD JOO**

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

*Through: - Mr. Danish Majeed, Advocate  
Ms. Monisa Manzoor, Advocate  
Ms. Mehjabeena Gulzar, Advocate.*

**Vs.**

**UT OF J&K AND ANR.**

**...RESPONDENT(S)**

*Through: - Mr. Mohsin Qadiri, Sr. AAG, with  
Mr. Mohammad Younis, Assisting Counsel.*

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

**JUDGMENT(ORAL)**

1) The petitioner is seeking bail in a case arising out of FIR No.45/2024 for offences under Section 137(2), 64 of BNS and Section 3/4 of POCSO Act registered with Police Station, M. R. Gunj, which is stated to be pending before the Court of Special Judge POCSO Cases, Srinagar (hereinafter "the trial court").

2) The facts leading to the filing of the present bail application are that on 11.11.2024, Police Post, Urdu Bazar, Srinagar, received a written complaint from the father of the victim Ms. X, alleging that his daughter is missing from home since 08.11.2024. On the basis of this complaint, FIR

No.45/2024 for offence under Section 137(2) of BNS was registered with Police Station, M. R. Gunj, Srinagar, and investigation of the case was set into motion. As per the school record, date of birth of Ms. X was found to be 25.11.2008. During the course of investigation, Ms. X was recovered by her maternal uncle on 17.11.2024 from Sunday market Lal Chowk, Srinagar. During the preliminary enquiry of Ms. X, it was found that she had been forcibly raped by four different persons at four different places on four different dates. Ms. X was subjected to medical examination at Government Lalladed Hospital, Srinagar. Her hymen was found ruptured. Some samples including her DNA sample and vaginal swabs were collected by the doctors, whereafter she was handed over to her parents by the Child Welfare Committee, Srinagar. The statement of Ms. X under Section 183 of BNSS was recorded by the Judicial Magistrate.

3) In her statement recorded under Section 183 of BNSS, Ms. X narrated that she had left from her home with her friends Ashu and Junaid on Ashu's bike and they roamed in Srinagar City and went to Nishat. When it got late, they went to Ashu's house who lives in Rainawari, Srinagar. She was scolded by mother of Ashu for having come to their home. On next day, Ashu dropped her near Zero Bridge, Srinagar. She further stated that she remained in SMHS Hospital, Srinagar,

for two nights outside the ward whereafter she went to Sunday market, Srinagar, where she met accused Chaman Lal who took him to his hotel where he committed forcible sex upon her. Ms. X further stated that she stayed with accused Chaman Lal for two days whereafter he dropped her at SMHS Hospital where she stayed for another night. She again went to accused Chaman Lal who dropped her at Jahangir Chowk where she met an uncle who offered to take her to her destination. Ms. X boarded his car and he took her to a hotel near Zero Bridge, Srinagar, where he forcibly committed rape upon her. Ms. X stated that she does not know the name of the said uncle. Thereafter next morning, she went to Sunday market and was roaming over there where she was spotted by her uncle Manzoor Khan and her cousin Iman Khan, who took her to home. She further stated that before she met the uncle at Jahangir Chowk who had forcible sex with her in the hotel near Zero Bride, Srinagar, in between she had gone to Makhdoom Sahab Shrine in a car with a person who abused her but did not get physical with her. She further stated that at Makhdoom Sahab, she met an uncle whose name she does not know, who gave his phone number to her and promised to give her job. The said uncle took her in a car and forced her to take whisky. Ms. X turned heavy and when she opened her eyes, she found herself in the car of said person near

Eidgah but she does not know whether or not the said person had sex with her. From there she went with Ashu to his Karkhana near Makhdoom Sahib where she stayed with him for night where Ashu had forcible sex with her and on the next day, Ashu left her at Zero Bridge, Srinagar. She further stated that now she wants stern action against Ashu and the two uncles, one who met her at Makhdoom Sahib and one who had forcible sex with her in hotel near Zero Bridge, Srinagar.

4) During the course of investigation, the person, namely, Ashu, was identified as accused Mohammad Ashraf Sheikh and he was arrested on 18.11.2024. Another person, namely, Chaman was identified as accused Chaman Lal who was arrested on 24.11.2024 and third person was identified as accused Basharat Ahmad Shora. He was arrested on 29.11.2024. The test identification parade of accused Chaman Lal and Mohammad Ashraf Sheikh was conducted on 26.11.2024 in presence of Executive Magistrate, 1<sup>st</sup> Class, Khanyar, before independent witnesses. Similarly, the test identification parade of accused Basharat Ahmad Shora was conducted on 02.12.2024 in the presence of Executive Magistrate, 1<sup>st</sup> Class, Khanyar, in presence of independent witnesses and employees of Child Welfare Committee. The potency test of all the above named three accused persons

was conducted and during the course of investigation, DNA samples of the accused as well as DNA sample of Ms. X were collected for their analysis and expert opinion. CCTV footage was asked from the hotel where the victim was alleged to have been subjected to sexual assault and Call Data Records of all the above named accused were also collected. It was found that the said accused were present at the locations where the occurrence had taken place at the relevant time. The bank details of accused Basharat Ahmad Shora were also sought and it was found that he had paid certain amount to the hotel manager where the occurrence had taken place.

5) Based upon the statement of the victim and the statements of other witnesses, offences under Section 137(2) and 64 of BNS and 3/4 POCSO Act were found established against the accused and, accordingly, the challan was presented against them before the Court of Special Judge POCSO Cases, Srinagar.

6) Further investigation of the case was conducted, during the course of which fourth accused, namely, Nissar Ahmad Joo (petitioner herein) was arrested on 8<sup>th</sup> May, 2025. His test identification parade was conducted in presence of the Executive Magistrate, 1<sup>st</sup> Class, Khanyar. He was also subjected to potency test and his DNA samples were also collected for their expert analysis. Call Data Records of the

said accused were also collected. After investigation, offences under Section 137(2), 64 of BNS and 3/4 of POCSO Act were also found established against the petitioner/accused and the supplementary challan was laid against him before the Special Court POCSO Cases, Srinagar.

7) After the presentation of challan, the learned Special Court, vide its order dated 10.02.2025 framed charges for offences under Section 137(2), 64 of BNS and Section 3/4 POCSO Act against the above named three accused persons whereas after the presentation of supplementary challan, similar charges were framed against the petitioner herein vide order dated 17.07.2025 passed by the learned Special Court.

8) It appears that during trial of the case, statements of Ms. X and her parents have already been recorded by the trial court. In fact, after presentation of the supplementary challan against the petitioner herein and framing of charges against him, further statements of Ms. X as also her father have been recorded by the trial court. It also appears that the petitioner had approached the learned trial court for grant of bail but vide order dated 19.02.2025, the learned trial court has dismissed his bail application. It is pertinent to mention here that three co-accused in the case have been enlarged on bail by this Court in terms of judgment dated 26.11.2025 passed in bail application Nos.115 to 117 of 2025. However, the

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learned trial court, while rejecting the bail application of the petitioner, has concluded that his case stands on a different footing as the prosecutrix has supported the prosecution version so far as it relates to the role of the petitioner.

9) The petitioner has sought bail on the grounds that the learned trial court, while refusing concession of bail to the petitioner, has not properly appreciated the statement of the prosecutrix, inasmuch as the material inconsistencies and contradictions appearing in her testimony have been ignored by the learned trial court. It has been further contended that there are inherent inconsistencies in the statement of the prosecutrix, which makes her story improbable. It has further been submitted that during cross-examination of the prosecutrix, the petitioner has succeeded in bringing forth the facts which rebut the statutory presumption under Section 29 of the POCSO Act. It has also been contended that even the scientific evidence does not support the allegation that the petitioner has committed any sexual intercourse with the prosecutrix.

10) The respondent-State has contested the bail application by filing reply thereto, wherein it has been submitted that the prosecutrix has supported the version of prosecution while making her statement before the court. It has been contended that there is material on record to support the involvement of

the petitioner in the alleged crime which is very heinous in nature. It has also been contended that in case the petitioner is granted bail, there is every chance that he will tamper with other witnesses whose statements are yet to be recorded.

11) It is pertinent to mention here that the victim was made a party to the present proceedings, but despite service, no one appeared on her behalf.

12) Heard and considered.

13) Before coming to the other aspects of the case, it is necessary to deal with the contention of the respondent-State that the instant bail application is not maintainable because the earlier bail application of the petitioner, after filing of the charge sheet, stands rejected by the trial court and, as such, there is no change of circumstances.

14) The question that arises for consideration is whether or not successive bail application will lie before this Court. The law on this issue is very clear that if an earlier application was rejected by an inferior court, the superior court can always entertain the successive bail application. In this behalf, I am supported by the ratio laid down by the Supreme Court in the case titled **Gurcharan Singh & Ors vs. State (Delhi Administration), AIR 1978 SC 179** which has been followed by the Bombay High Court in the case of **Devi Das Raghu**

**Nath Naik v. State,(1987) 3 Crimes 363.** Thus, the rejection of a bail application by Sessions Court does not operate as a bar for the High Court in entertaining a similar application under Section 439 Cr. P. C/483 BNSS on the same facts and for the same offence.

15) Having held that the instant bail application is maintainable, let us now proceed to deal with the merits of the application. So far as the principles governing grant or refusal of bail are concerned, the same have been elucidated in a large number of judgments rendered by the Supreme Court and this Court. The principles laid down in these judicial precedents can be summarized as under:

- (i) *The gravity of the offence and the nature of the accusation including the frivolity of punishment in a case of conviction;*
- (ii) *The position and status of the accused vis-à-vis the victim and the witnesses;*
- (iii) *The likelihood of the accused fleeing from justice;*
- (iv) *The possibility of the accused tampering with the evidence and/or witnesses and obstructing the course of justice;*
- (v) *The possibility of repetition of the offence;*
- (vi) *Prima facie satisfaction of the Court in support of the charge including frivolity of the charge;*
- (vii) *Stage of the investigation;*
- (viii) *Larger interest of the public or the State;*

16) When it comes to offences punishable under a special enactment, such as, POCSO Act, the provisions contained in Sections 29 and 30 of the said Act are also to be borne in

mind. Section 29 raises a presumption of commission of an offence under Sections 3, 5, 7 and 9 of the POCSO Act against a person who is prosecuted for commission of the said offence, unless contrary is proved. Similarly, Section 30 raises a presumption with regard to existence of culpable mental state against an accused in prosecution of any offence under the Act which requires a culpable mental state on the part of the accused. However, the accused has a right to prove the fact that he had no such mental state.

17) Coming to the facts of the present case. It is correct that involvement of the petitioner in the alleged crime has been found after the investigation of the case and charges against him have also been framed. Thus, there is a statutory presumption of guilt operating against him. However, as already stated, the statutory presumption of guilt, which is triggered by operation of Section 29 of the POCSO Act, is rebuttable in nature. Therefore, it is open to an accused to bring to the notice of the Court the material or lack of it to show that the foundational facts giving rise to the presumption are *prima facie* not established in the case or that evidence led during the trial of the case rebuts the presumption operating against him. Thus, an accused will be well within his rights to persuade the Court on the basis of the circumstances that may be established during cross-

examination of the witnesses conducted during trial of the case or on the basis of defence evidence, that the presumption of guilt operating against him in view of the provisions contained in Section 29 of the POCSO Act stands rebutted. It is also to be borne in mind that there is no statutory bar to grant of bail in a case involving offences under the POCSO Act and each case has to be considered on its peculiar facts and circumstances.

18) Learned counsel for the petitioner, while pointing out the contradictions and inconsistencies in the statement of the prosecutrix, has contended that the prosecutrix, while making her statement under Section 183 of BNSS, has stated that she was subjected to sexual assault by co-accused Basharat Ahmad Shora, Mohammad Ashraf Sheikh, and Chaman Lal and besides this, she was also subjected to sexual assault by an uncle type person, who was later identified as the petitioner herein but while making her statement during trial of the case, she exonerated all the three accused persons, namely, Basharat Ahmad Shora, Mohammad Ashraf Sheikh and Chaman Lal. This, according to the learned counsel, is a major contradiction on essential aspects of the prosecution case, which makes statement of the prosecutrix unreliable. He has further submitted that even while making her further statement after the

presentation of supplementary charge sheet against the petitioner, the prosecutrix clearly stated that she does not want any action against anybody and that she wants that the case should be dismissed. She even went to the extent of stating that she has no grievance against the petitioner herein. On the basis of aforesaid nature of statement of the prosecutrix, it has been contended that there is remote possibility of conviction of the petitioner in the present case.

19) When we have a look at the statement of the prosecutrix made under Section 183 BNSS and compare it with the statement made by her after the presentation of supplementary charge sheet, there are major inconsistencies and contradictions as have been pointed out by learned counsel for the petitioner. However, without commenting on the issue as to whether these contradictions in the testimony of the prosecutrix would ultimately make her statement unreliable, one thing is clear that vacillating stand of the prosecutrix at various stages of investigation and trial of the case gives rise to a situation which makes out a case for grant of bail to the petitioner, inasmuch as the same offers a sound defence to the charge laid against him.

20) Apart from the above, the scientific evidence collected by the investigating agency during investigation of the case shows that DNA profiling of the prosecutrix did not reveal

presence of any foreign DNA. Thus, statement of the prosecutrix, as regards involvement of the petitioner in the alleged crime, does not get support from the scientific evidence. Even father of the prosecutrix, while making his further statement after the filing of the supplementary charge sheet, has not supported the version of the occurrence as projected by the prosecution against the petitioner.

**21)** The DNA samples of the petitioner and DNA sample from the vaginal swab of the victim have been subjected to test analysis. The report of the expert reveals that no foreign DNA was detected in the sample. It has also been reported that DNA profiles generated from samples marked as B-1556-24, B-1561/24 confirms that the source of sample is human female and profiles are consistent with each other and belong to same individual (female). The medical report further suggests that there were no marks of violence on the private parts of the victim. There was no evidence of recent sexual intercourse with the victim.

**22)** In the face of aforesaid scientific evidence on record coupled with the nature of statement that has been made by the victim during the course of trial, it can safely be stated that the petitioner has been able to rebut the presumption of guilt which had triggered against him upon framing of charges under Section 3 and 4 of the POCSO Act.

23) It appears that the learned trial court has, while rejecting the bail applications of the petitioners, failed to analyze the statement of the prosecutrix, at least for the limited purpose of deciding the bail application of the petitioner. The omission on the part of the learned trial court to do so has resulted in passing of the order rejecting the bail application of the petitioner which is not sustainable in law.

24) In view of the nature of evidence available against the petitioner and without commenting upon the merits of the case, it is clear that during trial of the case, the statutory presumption of guilt operating against the petitioner in terms of Section 29 of the POCSO Act stands rebutted. The petitioner has been in custody for the last one years. The statements of material witnesses have already been recorded and even if the petitioner is released on bail at this stage, there is no chance of the prosecution witnesses getting tampered with because the victim and her near relations have already been examined during trial of the case.

25) Merely because the petitioner is facing trial for heinous offences which entail punishment extending upto life imprisonment, is not a good enough reason to deny concession of bail to him when his, *prima facie*, involvement in the alleged crime is highly doubtful. The concession of bail to the petitioner, in these circumstances, cannot be denied

just to teach him a lesson or to satisfy the conscience of the society as it would amount to inflicting pre-trial punishment upon them, which is impermissible in law.

**26)** For the foregoing reasons, the petition is allowed and the petitioner is admitted to bail subject to the following conditions:

- (i) *That he shall furnish personal bond in the amount of Rs.50,000/ 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.*

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

**(Sanjay Dhar)**  
**Judge**

**SRINAGAR**  
**31.07.2026**  
"Bhat Altaf-Secy"

Whether the **judgment** is reportable: **YES/NO**