



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

Bail App No. 155/2024

Reserved On: 25th of March, 2025.

Pronounced On: 06.06.2025

Parvaiz Ahmad Hanga

... Petitioner(s)

Through: -

Mr Sajjad Ashraf Mir, Advocate.

V/s

Union Territory of J&K and Anr.

... Respondent(s)

Through: -

Mr Rais-ud-Din Ganai, Dy. AG.

CORAM:

Hon'ble Mr Justice Rahul Bharti, Judge

(JUDGMENT)

1. The petitioner-Parvaiz Ahmad Hanga, acting through his wife Tabasum Parviaz, has come forward, as an undertrial in custody, invoking jurisdiction of this Court under section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, for seeking bail in a criminal case initiated by reference to FIR No. 23/2024 registered by the Police Station, Lar District Ganderbal, undergoing trial before the Court of learned Principal Sessions Judge, Ganderbal.
2. It is by reference to an incident of 21st of May, 2024 that the registration of FIR No. 23/2024 of the Police



Station Lar had taken place when a motor cycle No. JK04C 1974 upon being signalled to stop at a police naka set up at Yenham, Lar driven by a motor cyclist tried to flee but got caught resulting in search and discovery of polythene bag containing three (03) bottles of Tusklis-T leading to further discovery of facts in interrogation that there are other persons involved in the illicit activities.

3. The petitioner was not the one who was allegedly caught with the alleged illicit drug in said naka incident but came to be implicated on the basis of the alleged statement of the culprit motor cyclist-Dawood Ahmad Rather that the alleged illicit drug was received by him from the petitioner.
4. The petitioner, upon being arrested by the Investigating Officer (IO) of Police Station Lar, is said to have confessed that he was dealing in the narcotic business illegally and that is how the petitioner came to be put up for trial as one of the co-accused.
5. The petitioner is said to be carrying a medical history at the time of his arrest and, as such, during the course of his custody medical complications related to him came to be observed which resulted in the petitioner being taken by the Jail/Police Authorities



to medical treatment to the referral Police Hospital, Srinagar.

6. The petitioner came to apply to the trial court of learned Principal Sessions Judge, Ganderbal for bail on medical grounds.
7. The trial court of learned Principal Sessions Judge, Ganderbal reckoned the compulsion and constraint of keeping the petitioner in custody on account of nature of alleged offences slapped against him outweighing the consideration of releasing the petitioner on bail on medical grounds as reported and related to his health.
8. In its order dated 11th of December, 2024, the court of learned Principal Sessions Judge, Ganderbal has reproduced the extract of the health status report of the petitioner confirmed by the medical team of doctors who attended upon the petitioner while in the state of custody and the same is reproduced as under:

“The health status report states that on 10-07-2024 the inmate was referred to Police Hospital Srinagar. The X-Ray is showing normal study, and USG abdomen is suggestive of fatty liver Grade-1, small Hyperechoic lesion seen in left lobe, uncontrolled blood sugars. He was managed conservatively.

On 10-08-2024 the inmate was referred to Police Hospital Srinagar for follow-up. On 16-09-2024, the inmate was referred to Police Hospital Srinagar again for follow up and on 05-10-2024 he



was again referred to Police Hospital Srinagar for follow up/check-up.

It is further submitted in the health status report on 08-10-2024 that the inmate was referred to Superspeciality Hospital Shireen Bagh Srinagar for Urological/Nephrological consultation. He was examined by consultant Urogram. He was further advised Urological consultation. He was also examined by consultant Urologist who after examination advised medication and CECT abdomen/pelvis and Urogram. On 25-11-2024, the inmate was again referred to Superspeciality Hospital, Srinagar for CECT Abdomen/Pelvis with Urogram. The consultant Radiologist in view of raised creatinine advised Nephrological clearance for the above said investigation. The consultant Nephrologist after examination advised medication and further advised to wait for one week. On 09-12-2024 CT Urogram was done and the report reveals no residual lesion/rest unremarkable study.”

9. The petitioner’s medical condition is critical which fact is beyond any cavil and for that this court needs not to go into any sort of appraisal just for the sake of doing some filling to this judgment.
10. In a case related to grant or denial of bail on medical grounds to an accused person under legal custody, be pre-trial or pending trial, the court, be it trial court or the High Court, when approached in the matter is invariably caught in a double bind situation.
11. The ponderable aspect in such a situation is to weigh whether to let an ailing and sick accused person under custody to get the medical treatment as per the Prison/Jail’s protocol, without being enlarged on bail



for enabling him to fend for himself or herself, and thereby let the situation become progressively aggravated then to be left later with no other option except to let the ailing/ sick accused to be granted a duration bail to be co-timed with the medical treatment so as to enable the ailing/ sick accused and his or her family members to act upon the self efforts and expenses at their own disposal to get the ailing/ sick accused medically attended and convalesced or to have a very realistic assessment of the ailing/ sick accused person's reported medical condition while in custody state and take a timely and preemptive call to grant bail for a duration so as to enable the ailing/ sick accused to get himself or herself medically treated as early as possible before medical aggravations and complications set in with respect to his/her health condition.

12. With the state of failing health of an ailing/ sick accused person under custody, his/ her immediate family, be it parents, spouse, children or near relatives, as the case may be, are equally and directly concerned without a miss besides the ailing/ sick accused person himself or herself being under unceasing concern notwithstanding the medical attention being provided by the Jail authorities.



13. Drawing from practical understanding and experience, even the jail authorities may, in any given case, in very realistic terms nurse a concern for an ailing/sick under trial person in custody and intend his or her family members/relatives to be proactive and involved so as to get the ailing/sick accused person not only medically but personally attended for his or her quick recovery and betterment.
14. Prison system and administration in India, in terms of its infrastructure and resources, is ever over-burdened and over-stretched with shortage of space and manpower to deal with crowd of prisoners in routine. In such like scenario to expect an ailing/sick prisoner with an aggravating medical condition to get and receive full and timely care and attention of the jail authorities without fail would be a utopian rather than a realistic expectation.

Case law with respect to bail on medical grounds:

15. In the case of **‘Amar Sadharam Mulchandani v. Directorate of Enforcement & Anr. (2024 SCC Online SC 4408)’**, the Hon’ble Supreme Court of India came to grant indulgence by enlarging the petitioner in the said case on interim bail based upon medical condition of the petitioner reported by the



medical team at Sir JJ Group of Hospitals, Mumbai. The petitioner in that case was 67 years old sick person suffering from diabetes, hypertension, chronic kidney disease and ischemic heart disease and his condition becoming bad while in state of custody as an under-trial.

16. In the case of **‘Satinder Kumar Jain v. Directorate of Enforcement (2023 SCC Online SC 686)’**, the Hon’ble Supreme Court of India relied upon the medical report of GB Pant Institute of Post-Graduate Medical Education and Research with respect to medical condition of the petitioner being an under-trial and showing indulgence to release on interim bail on medical grounds by reckoning the fact that a citizen is having a right to take treatment of his choice at his own expenses in a private hospital.
17. In the case of **‘State of Uttar Pradesh v. Gayatri Prasad Prajapati’**, the Hon’ble Supreme Court of India in its order dated 15th of October, 2020 in disposing of Criminal Appeal No. 686/2020 has registered a caveat which is meant for due cognizance that even in the matter of granting bail on medical grounds, the totality of the facts and circumstances of the case are to be kept in due perspective including



the satisfaction that treatment offered to an under-trial for medical ailment while in state of custody being not adequate warranting further treatment by any particular medical institute necessitating the release of an under-trial on interim bail on medical grounds. The Hon'ble Supreme Court of India reiterated that there can be no two views with regard to proposition that human treatment to all including an accused is requirement of law and a prisoner who is suffering from an ailment has to be given due treatment and care while in prison.

18. In the case of '**Dipak Shubhashchandra Mehta v. Central Bureau of Investigation and Anr. [2012 (4) SCC 134]**', the Hon'ble Supreme Court of India has delved on the matter of grant of bail to an under-trial on medical grounds. In this case, the petitioner was the Joint Managing Director of Vishal Exports Overseas Limited, a Public Limited Company, against which due to non-payment of advances availed from various Banks criminal complaints came to be filed involving the promoters and directors and one of the FIRs was by Central Bureau of Investigation (CBI) for commission of offences under sections 406, 420, 467, 468 and 471 read with 120-B of the Indian Penal Code (IPC), 1860 resulting in arrest of the petitioner



on 31st of March, 2010 followed by police custody and judicial custody. The petitioner in the said case stood granted temporary bail on three occasions on medical grounds. Upon presentation of the charge sheet by the Central Bureau of Investigation (CBI) involving the petitioner as accused No.4, being an under-trial, an application was preferred before the trial court seeking bail which was dismissed and an attempt on the part of the petitioner in the said case to seek regular bail from the High Court of Gujarat had resulted in failure. The petitioner again came to be arrested in another FIR in which a charge sheet was submitted but again the petitioner was released on temporary bail. An attempt on the part of the said petitioner in seeking regular bail suffered failure which resulted in the matter landing before the Hon'ble Supreme Court of India in which a point for consideration came to be formulated as to whether the petitioner had made out a case for regular bail and whether the High Court is justified in dismissing his application. The Hon'ble Supreme Court of India came forward to reiterate the position of law that orders granting/ refusing bail by the High Courts are not ordinarily admissible to be interfered with save in exceptional cases. The medical condition of the



petitioner was put forth to the effect that he was having uncontrolled high blood pressure with thirty percent blindness in his right eye and having undergone a surgery for vitreous hemorrhage which had re-occurred for which the medical advice was to go for second surgery to save his eyes. During the period of his custody, the petitioner in the said case is said to have suffered obstruction jaundice requiring long intensive treatment thereby rendering the petitioner in a condition making out a case for his bail on medical grounds. The Medical Officer of the Central Jail Dispensary Ahmedabad had also certified that the petitioner in the said case needed treatment from Specialist/Super-Specialist/ Cardiologist/ Gastroenterologist/ Ophthalmologist for his multiple problems. In paragraphs No. 32, 33 and 34, the Hon'ble Supreme Court of India came forward with the observations which are worth reproducing herein as under:

“32. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The court granting bail has to consider, among other circumstances, the factors such as (a)



the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (c) prima facie satisfaction of the court in support of the charge. In addition to the same, the court while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.

33. Considering the present scenario and that there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31-3-2010, except the period of interim bail i.e. from 15-9-2011 to 30-11-2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. This Court has repeatedly held that when the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated.

34. As posed in Sanjay Chandra case, we are also asking the same question i.e. whether the speedy trial is possible in the present case for the reasons mentioned above.”

19. In the case of **‘Mangilal Thakur v. State of Madhya Pradesh (2022 SCC Online SC 1066)**, interim bail for a period of thirty (30) days on medical grounds came to be granted by the Hon’ble Supreme Court of India.
20. The Hon’ble High Court of Delhi in the case of **‘Nitish Kumar v. Directorate of Revenue Intelligence (Bail Application No. 2072/2023)’**, in its judgment dated 29th of August, 2023, dealing with the grant of bail on medical grounds in favour of an under-trial accused with accusation of having made efforts to get four



containers cleared containing a total 34.7 kgs of heroin, came to deal with the examination and elements of bail on medical grounds. In paragraph No. 16 of its judgment, the Single Bench of the High Court of Delhi has observed that the health of the petitioner has to be given primacy as it is his fundamental right to be given adequate and effective treatment whilst in jail but in case specialized or sustained treatment and care are necessary which are not possible whilst in jail the petitioner is entitled to the benefit of interim bail on medical grounds.

21. In the case of **‘Sameer Mahandru v. Directorate of Enforcement’**, the High Court of Delhi in dealing with Bail Application No. 1343/2023 read with CrI.M.A. 10859/ 2023 came to deal with the case of an under-trial/ arrestee having medical issues related to his health by a long deliberation on the matter. In this case, the High Court of Delhi came to pose a question as to whether the petitioner is entitled to interim bail as being sick or infirm in terms of proviso to section 45 (1) of the prevention of Money Laundering Act, 2002. This issue was examined in conjunction with section 437 of the Code of Criminal Procedure, 1973, as was then in force, by identifying the nature of sickness or infirmity envisaged for enabling grant of



bail in favour of an arrestee. The Hon'ble High Court of Delhi came to refer to its previous judgment in the case of '**Kewal Krishan Kumar v. Enforcement Directorate**', neutral citation No. 2023:DHC:1925, in which it came to be held that sickness or infirmity is to be of such a nature that it is life threatening and requires medical assistance that cannot be provided in penitentiary hospitals. The observations of the Hon'ble High Court of Bombay in the case of '**Mahendra Manilal Shah v. Rashmikant Mansukhlal Shah (2009 SCC Online Bom 2095)**', came to be referred as to the nature of sickness to be seen as to whether an accused as an arrestee can be treated in Government hospital in custody. The High Court of Delhi came to hold that a cumulative consideration of the legislative intent of the PMLA and precedents indicates that proviso to section 45 (1) is a relaxation to the sick or infirm persons provided that sickness or infirmity is so grave that it is life threatening and cannot be treated by jail hospitals. It has been observed by the High Court of Delhi that discretionary power of the court in granting bail in relation to a sick or infirm person should not be exercised at the last breathing stage, but when adequate treatment is warranted for the accused



persons with ailment. In paragraphs No. 50 and 51 of its judgment, the High Court of Delhi has come to observe that health condition of a human being deserves utmost importance and right to health is one of the most significant dimensions of article 21 of the Constitution of India entitling him to a right to get himself adequately and effectively treated in which connection exercise of discretion of grant of bail is not to be exercised only as a last resort but by reckoning that freedom is a cherished fundamental right.

22. The High Court of Delhi again in the case of **‘Sanjay Jain v. Enforcement Directorate’**, in its decision dated 5th of June, 2023 in Bail Application No. 3807/2022, again came to deal with grant of bail in favour of an under trial/ arrestee on medical grounds. In paragraphs No. 14 and 15, the Hon’ble High Court of Delhi came to bear in perspective the position of law settled on the issue of grant of bail on medical grounds by the judgments of the Hon’ble Supreme Court of India. In paragraph No.22 of its decision, the High Court of Delhi came to identify Article 21 of the Constitution of India providing for protection of life and personal liberty which right is not meant to be curtailed, except according to procedure established by law in which regard liberty of a person who is



accused or convicted of an offence can be curtailed according to procedure established by law but right to health, also recognized as an important facet of Article 21 of the constitution of India, is meant to sub-serve a person who is an under-trial or for that matter even a convict lodged in a jail by making it an obligation upon the State to provide adequate and effective medical treatment to every person lodged in jail. In this judgment also, the nature of sickness envisaged to be a ground for grant of bail to an accused/arrestee came to be taken up to come to a point of exposition that a sickness co-related with grant of bail on medical grounds has to be one which is life threatening warranting specialized treatment not available in jail hospital/s.

23. Now coming to the take of our own High Court of Jammu & Kashmir and Ladakh on the issue of grant of bail on medical grounds, this Court in the case of **‘Amarjeet Singh v. State of J&K and Anr. (2019 SCC Online J&K 177)’** came to examine the medical condition of the petitioner in the said case to hold that he was not suffering from any fatal life threatening disease requiring specialized treatment not available in the jail for enabling him to earn bail on medical grounds but reserved a right in his favour to apply for



bail before the trial court on medical grounds if in future he would suffer any serious complication.

24. In the case of '**Sajad Ahmad Bhat v. UT of J&K through Police Station Bijbehara (2022 SCC Online J&K 453)**', the petitioner in the said case was confirmed to be suffering from serious ailment under regular treatment of Government Medical College (GMC), Anantnag without any improvement in the health condition of the petitioner for which immediate surgery came to be advised. By reference to section 37 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 related to the grant of bail, read with section 439 of the Criminal Procedure Code, 1973, the learned Single Bench of the High Court of Jammu & Kashmir and Ladakh came to dislodge the observations of the learned Sessions Judge that the bail on medical grounds cannot be granted to the petitioner of the said case as he was involved in a heinous offence. The petitioner came to be granted bail on medical grounds by this Court by referring to the latest medical report.
25. Keeping in view the factual aspect of the present case relatable to the medical condition of the petitioner and the legal position relatable to grant of bail on medical



grounds, this Court comes to a confirmed situation that the kidney functioning of the petitioner is compromised and that requires not only recurring medical monitoring but also attention, specialized medical treatment and care which in the state of petitioner, being in custody as an under trial, may not be possible to be administered to the petitioner and, as such, may risk the health and life of the petitioner at any given point of time and, therefore, a case is made out for indulgence of this Court in granting bail to the petitioner.

26. The petitioner is hereby granted bail for a duration of four months subject to the furnishing of bond, personal as well as surety, to an amount of Rs. 5 lac each to the satisfaction of the court of Principal Sessions Judge, Ganderbal who shall also settle terms and conditions of the bail hereby granted by this Court and then enlarge the petitioner on bail. Any further extension of bail upon expiry of period of four months, is to be considered by the learned trial court on the basis of assessment of medical condition and reports related to the petitioner.



27. Copy of this judgment be forward by the Registrar Judicial, Srinagar to the court of Principal Sessions Judge, Ganderbal for notice and compliance.
28. The petitioner shall also be at liberty to produce certified copy of this judgment for the notice and compliance at the end of the court of Principal Sessions Judge, Ganderbal.
29. Disposed of.

(Rahul Bharti)
Judge

SRINAGAR

06.06.2025

"TAHIR"

- i. Whether the Judgment is approved for reporting? **Yes.**