

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

Bail App 64/2023

**Reserved on: 31.08.2024
Pronounced on: 26.09.2024**

1. Mrs. Almas Ara alias Rozy
w/o Dr. Maqsood Hussain Khan
2. Fahad Maqsood Khan
s/o Dr. Maqsood Hussain Khan
Both lodged in Central Jail Srinagar
Through Dr. Maqsood Hussain Khan s
S/Oo Dost Mohd.
R/o at present Dalgate, Srinagar

... Petitioner/Appellant

Through: Mr. Z. A. Qureshi, Sr. Advocate with
Mr. Agha Faisal Ali, Advocate
Mr. Mufti Mehraj, Advocate

V/s

UT of Jammu and Kashmir through
SHO Police Station, Saddar, Srinagar.

... Respondent

Through: Mr. Alla ud Din, AAG

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

J U D G E M E N T

1. The petitioners who are the mother-son duo, figure as accused in the challan bearing no. 83/2002 titled "State versus Sadat Maqsood Khan & Ors.", pending before the court of learned Additional Sessions Judge, Srinagar (for short the 'Trial Court') and are facing trial along with Saadat Maqsood (son of petitioner no. 1 & brother of petitioner no. 2) and Maqsood Hussain Khan (husband of petitioner no. 1 & father of petitioner no. 2) for commission of offences under sections 120-B, 302, 307, 326, 324, 506, 201, read with section 34 of RPC in FIR No. 135/2012 registered with Police Station, Sadar. It is stated by the petitioners that during the pendency of the chargesheet, as per the

directions of the Hon'ble Supreme Court, Under Trial Review Committee (URTC) constituted under the Chairmanship of Learned Principal Sessions Judge to consider and recommend the cases of Undertrials for grant of bail, has recommended that the petitioner No.1 be enlarged on bail. The petitioners had filed the bail application before the learned trial court bearing No. 2309/2022 but the said bail application is pending adjudication and no effective hearing has taken place owing to the fact that no Presiding Officer has ever remained permanently posted in the trial court and only dates are being given in the case and at present the trial court is without Presiding Officer. The petitioners have filed this application for grant of bail on the following grounds:

- a) That the petitioner No.1 is an old lady of 70 years of age, suffering from diabetes and severe gout and has been in custody for the last 11 years whereas the petitioner No.2 was 18 plus years of the age, when occurrence took place, and he too has been behind bars for the last 11 years. It is further stated that indefinite incarceration of the petitioners amounts to punishing the petitioners before they are proved guilty.
 - b) That there are two sets of evidence brought on record by the prosecution. One set of witnesses consists of wife, daughters and son of the deceased whereas the other set consists of independent witnesses. The independent witnesses have not corroborated the story of the prosecution, or the story projected by the relatives of the deceased. The independent witnesses have not deposed in respect of involvement of the petitioners or the accused No. 3 Dr. Maqsood Hussain Khan, who has already been enlarged on bail on health grounds.
2. Objections have been filed by the respondent stating therein that on 04.07.2012, one lady Mst. Shameema wife of Ghulam Mohammed Shah

resident of Budshah Nagar Natipora reported at the Police Post Chanpura with an application stating there that on 04.07.2012 at 9:00 PM she along with her family members was in her house. One Maqsood Hussain Khan who is the residing in their neighbourhood along with his family members i.e. the other accused forcibly entered and pelted stones on the main gate. Her husband came out from the house and asked them the reason and requested to stop pelting bricks but all of them caught him and ruthlessly assaulted him with a lathis, bricks, knife with intention to kill him. He was rescued by some other neighbours and was taken to hospital in injured condition. On receipt of this information FIR No. 135/2012 under sections 307,120-B,34 RPC was registered at Police Station Saddar. Investigation was taken up by S.I Mohammad Ishaq. While the case was under investigation, injured Gulam Mohammed Shah succumbed to his injuries at SKIMS, Srinagar on 05/07/2012 and offence 302 RPC was added. Accused were arrested in the instant case on 06.07.2012. After the conclusion of the investigation, the chargesheet against the four accused persons was filed before the court of Learned Chief Judicial Magistrate, Srinagar on 01.09.2012 for Commission of offences under section 302, 307, 34,120-B, 326,324,506, 201 RPC. It is stated that the petitioners are involved in the commission of heinous offence and in case they are released on bail they will hamper the trial of the case. It is further averred that the trial of the case is going on smoothly and witnesses are being examined regularly and in case the court release the petitioners on bail, they would try to win over the prosecution witnesses.

3. Pursuant to the order of this court, the nominal roll of the petitioners has been submitted, wherein it has been stated that the petitioners have been in custody for 11 years, 11 months and 24 days as on 30.06.2024.
4. Learned senior counsel for the petitioner has submitted that the petitioners have been in custody for the last more than 12 years and the prosecution still has not been able to exhaust its list of witnesses, as some of the prosecution witnesses are yet to be examined. He has further argued that the petitioner no.1 is an old lady of 70 years of age, suffering from diabetes and severe gout whereas the petitioner no.2 was hardly 18 years of age, when the alleged incident took place, and he too is under custody for the last 12 years. He has vehemently submitted that the independent witness examined by the prosecution have not at all implicated the petitioners, as such the petitioners deserve to be enlarged on bail, more particularly when they have been in custody for the last 12 years and the prosecution is still continuing with the examination of its witnesses.
5. **Per Contra**, Mr Allauddin Ganai, learned A.A.G has argued that the petitioners are involved in the commission of heinous offence of murder and as such they are not entitled to bail. He has further argued that while considering the application for grant of bail, the evidence brought on record by the prosecution cannot be appreciated.
6. Heard and perused the record.
7. This application for grant of bail was filed on 30.05.2023 and it has been mentioned that the trial court was without Presiding Officer. This court has perused the record of the learned trial court and finds that the regular

proceedings have been conducted by the learned trial court, as is evident from the orders dated 20.05.2023, 03.06.2023 and onwards. It is contended by the petitioners that they had filed application for grant of bail before the learned trial court but the same has not been considered and decided, as no Presiding Officer ever remained posted regularly and at present also the court is without Presiding Officer. This wrong assertion is sufficient enough to dismiss the present application but taking into consideration that the petitioner No.1 is an old lady of 70 years of age, having health issues and has been in custody for the last 12 years, this court has shown indulgence in case of the petitioner No.1 only.

8. The prosecution has cited as many as 32 witnesses in the challan, but it appears that 12 years have not been enough for the prosecution to exhaust its list of witnesses, as few witnesses are yet to be examined. The perusal of order dated 13.07.2024 passed by the learned trial court reveals that the PWs 19 and 21 are working outside the country and their presence is being secured through non-bailable warrants. The right to speedy trial is a fundamental right and accused cannot be kept in custody for indefinite period and this court also does find that there is any likelihood of conclusion of the prosecution evidence in near future.
9. Taking into consideration the continuous incarceration of the petitioner No.1, an old lady of 70 years of age, for the last 12 years and no likelihood of completion of trial in near future and as the allegations against the petitioner No.1 are not in respect of any incident related to terrorism, this Court is of the considered view that the petitioner No.1 deserves to be enlarged on bail. Accordingly, the present application is

allowed to the extent of petitioner No.1 only, and the petitioner No.1 is enlarged on bail subject to the following conditions:

- (i) She shall furnish two solvent sureties to the tune of Rs.50,000/- each and personal bond of like amount to the satisfaction of the learned trial court.
- (ii) She shall appear before the trial court on each and every date of hearing unless exempted by the learned trial court.
- (iii) She shall not leave territorial jurisdiction of UT of Jammu and Kashmir without prior permission of learned trial court.

10. In the event of violation of any of the conditions mentioned above, the respondent can lay a motion for cancellation of bail of the petitioner No.1 before the learned trial court. The trial court is directed to dispose of the application for grant of bail filed by the petitioner No.2 within the period of 30 days from the date of receipt of this order.
11. Original record, if any summoned, be returned forthwith.
12. Copy of this order be sent to learned trial court for information.

(RAJNESH OSWAL)
JUDGE

Srinagar
26-09-2024
N Ahmad

Whether the order is reportable:	Yes/No
Whether the order is speaking:	Yes/No