

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

Case:- Crl A (D) No.02/2025

Pronounced on : 17.10.2025

Uploaded on : 18.10.2025

**Farooq Ahmed, Age 30 years S/O
Talib Hussain
R/O Derai Dabsi
At present Dhar Galoon Kotan,
Tehsil Mendhar, District Poonch
At present lodged in Central Jail
Kot Bhalwal, Jammu**

.... Appellant(s)

Through:- Mr. I. H. Bhat, Advocate

V/s

**Union Territory of J&K through
SHO Police Station Mendhar**

.....Respondent(s)

Through:- Mrs. Monika Kohli, Sr. AAG.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**JUDGMENT (ORAL)
17.10.2025**

Per: Sanjay Parihar-J

01. This appeal, filed under Section 21 of the National Investigation Agency Act, 2008, is directed against the order dated 31.12.2024 passed by the learned Additional Sessions Judge, Poonch [Special Judge (Rajouri-Poonch) under NIA Act], whereby the trial court declined to grant bail to the appellant in case FIR No. 305/2021 registered for offences punishable under Sections 17, 18, 20, and 40

of the Unlawful Activities (Prevention) Act, 1967 (UAPA), read with Sections 120-B, 121, 122, and 123 of the Indian Penal Code, 1860.

02. The appellant, who has been in custody since 09.08.2021, assails the impugned order primarily on the ground that the trial court has erred in declining bail. It is urged that there exist no reasonable grounds for believing that the accusations against the appellant are *prima facie* true. It is contended that the appellant has been made to languish in jail without any substantive evidence against him; that the trial court has failed to assess the probative value of the material collected during investigation and adduced at trial. Particular reliance is placed on the trial court's observation that "*it is very difficult to frame an opinion at this stage that reasonable grounds exist for believing that the accusation against the accused persons is true or not*". According to the appellant, such an observation itself demonstrates non-application of mind to the mandate of Section 43-D (5) of UAPA, which is attracted only when there are reasonable grounds for believing that the accusations against the accused are *prima facie* true.

03. Per contra, Mrs Monika Kohli, learned Senior Additional Advocate General, opposing the appeal, submitted that the appellant is involved in grave anti-national activities. It is contended that incriminating material has been recovered from his possession and that he is an active member of Jammu & Kashmir Ghaznavi Force (JKGF), a proscribed terrorist organisation under UAPA. It is further urged that the appellant, along with the co-accused, was

engaged in raising funds not only for perpetrating terrorist acts but also for sustaining a terrorist organisation, thereby attracting the rigour of Section 43-D (5) of UAPA.

04. We have heard learned counsel for the parties and carefully perused the charge-sheet as also the documents annexed thereto. The record reveals that co-accused Mohd. Ilyas and Mohd. Shakeel were found to be in contact with Pakistan-based Inter Services Agency, which has been engaged in destabilising the Indian Union by exhorting proscribed organisations to indulge in narco-terror activities. Pursuant to the disclosure statement of co-accused Mohd. Shakeel, an amount of ₹19,76,000/- in Indian currency, along with posters of Jammu & Kashmir Ghaznavi Force (JKGF) came to be recovered. During the investigation, the chain of disclosures allegedly led to co-accused Mohd. Rehman, from whose possession ₹2,000/- in Indian currency and eight posters of JKGF were recovered. It was alleged that co-accused Mohd. Parvaiz provided a cash of Rs.1 lakh and some Pakistani posters to the appellant-Farooq Ahmed and similar one was given to co-accused Rashid Ali. It was further alleged that there was a meeting of the accused wherein Mohd. Parvaiz gave further direction as per the message given by Mohd. Razaq and Ismail for recruitment of youngsters in the Jammu Kashmir Ghaznabi Force in collaboration with each other and include them in the Outfit. It is on this basis that the appellant, along with the co-accused, has been arraigned for offences under Sections 17, 18, 20, and 40 of UAPA read with Sections 120-B, 121, 122, and 123 of IPC. However, the investigating agency did

not find sufficient material to substantiate offences under Sections 19 and 21 of UAPA or Sections 212 and 216 of IPC.

05. From a perusal of the impugned order, it is evident that while the trial court has referred to the nature of accusations against the appellant, it has failed to properly appreciate the scope and application of Section 43-D (5) of UAPA. The said provision lays down a statutory embargo against the grant of bail if the Court believes that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true. The trial court, by recording that it is “difficult to frame an opinion at this stage,” has virtually abdicated its statutory duty to arrive at a satisfaction as contemplated under Section 43-D (5), thereby rendering its reasoning unsustainable in law.

06. In **National Investigation Agency Vs. Zahoor Ahmad Shah Watali** reported in **2019 (5) SCC 1**, it was observed:

“17. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.”

In **Union of India vs. Shri Shiv Shanker Kesari, 2007 (7) SCC 798**, it was held: -

“7. The expression used in [Section 37\(1\)\(b\) \(ii\)](#) is “reasonable grounds”. The expression means something more than *prima facie* grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged, and this reasonable belief contemplated in turn points to the existence of such facts and circumstances as

are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

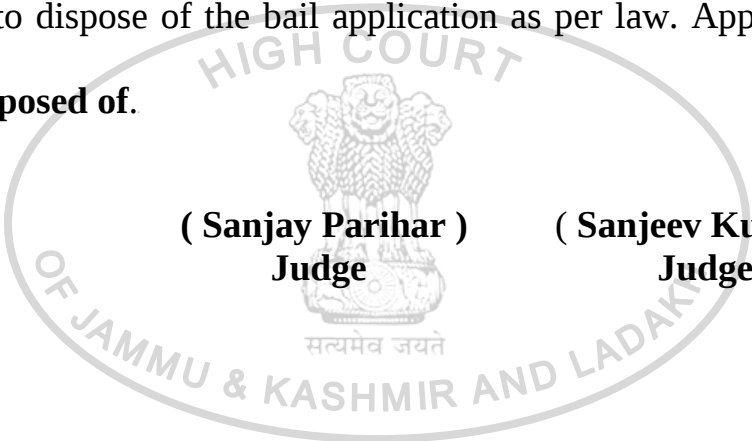
8. The word "reasonable" has in law the *prima facie* meaning of reasonable concerning those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word 'reasonable.'"

07. Since the appellant had approached the trial court with an application for grant of bail on the ground that the material available before the court was not sufficient enough to even raise a suspicion about his involvement in the commission of unlawful activities, it was incumbent upon the trial court to have framed an opinion on whether the grounds so urged by the appellant make out a case for bail or not.

08. On our careful consideration of the impugned order, we are of the considered view that the trial court has erred in not appreciating the import and scope of Section 43-D(5) of the UAPA in its correct perspective. The modified application of the Code of Criminal Procedure, 1973, in respect of offences under Chapters IV and VI of the UAPA, provides that, in addition to the restrictions imposed under the Code, the Court, before granting bail, must necessarily hear the Public Prosecutor and return a finding that there existed reasonable grounds for believing that the accusation against the accused is *prima facie* true. Conversely, where no such reasonable grounds are found to exist, the normal principle governing bail, namely, that "bail is the rule and jail the exception", would be attracted.

09. In the present case, without entering into the merits of the accusations or examining whether the appellant has carved out a strong *prima facie* case in his favour, we consider it appropriate to remit the matter back to the trial court, which shall hear the appellant as well as the prosecution afresh and thereafter pass a reasoned order strictly in accordance with law, keeping in view the mandate of Section 43-D(5) of the UAPA.
10. Consequently, the impugned order declining bail to the appellant is set aside. The matter is remanded to the trial court for fresh consideration. The parties, through their learned counsel, shall appear before the trial court on 17.11.2025, and the trial court shall proceed to dispose of the bail application as per law. Appeal shall stand **disposed of**.

JAMMU
17.10.2025
Narinder



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