

Sr. No. 2

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

**Pronounced on : 25.11.2024**

Case: **Bail App No. 151/2024**

Ajeet Kumar, aged 51 years  
S/o Sh. Panjabu Ram,  
R/o Reyalla, Jagir Dadoa Reasi  
Presently lodged in District Jail, Udhampur. .... Petitioner/Appellant(s)

Through :- Mr. P.N.Raina, Sr. Advocate with  
Mr. J.A.Hamal, Advocate.

V/s

Union Territory of J&K  
Through SHO Police Station  
Crime Branch, Jammu. ....Respondent(s)

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

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

**ORDER**

1. Through the medium of the instant petition filed under the provisions of Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS", for short) corresponding to Section 439 of the repealed code of Criminal Procedure, 1973 (hereinafter referred to as the

- “Code”, for short), the petitioner has sought the grant of regular bail in his favour in case FIR No. 19/2024 registered with Police Station, Arnas, Reasi under Sections 409, 420, 467, 468, 471, 477-A & 120-B IPC, subsequently investigated by the Crime Branch, Jammu and having culminated into the filing of a Final Police Report/Challan before the Court of learned Chief Judicial Magistrate, Reasi (hereinafter referred to as the “trial court”, for short).
2. The concession of bail has been sought by the petitioner on the grounds *inter alia* that he was working as Assistant Treasury Officer, Sub Treasury, Dharmari, Reasi, where one of the MTS official, namely, Ali Hussain Shah, while misusing the official trust manipulated the treasury system for his wrongful gain and credited the alleged misappropriated amount to his own Saving Account, where-after he absented himself from duty since 02.03.2024; that his innocence and non-involvement came to be established during the preliminary enquiry as well as in the investigation process but unfortunately the Investigating Agency in total disregard of the basic principles of investigation aimed at unearthing the real facts, involved him in the case as an accused instead of a witness; that the investigation in the case which came to be conducted by the Crime Branch, Jammu culminated into a Final Report/Challan which was presented before the learned trial court and is pending disposal; that he filed a bail application during investigation of the case through his wife before the learned trial court which was dismissed vide order dated

02.05.2024 passed on the said application; that subsequently his application for default bail in terms of the provisions of Section 167 (2) of the Code also came to be rejected by the learned trial court vide order dated 05.07.2024; that despite his being arrested along with the co-accused on 11.03.2024, he was shown arrested in papers on 14.03.2024; that his continued detention in the case tentamounts to his conviction before trial and infringes his fundamental right to liberty guaranteed under Article 21 of the Constitution; that the accusations against him are totally baseless, concocted and far from the facts; that the legal principle of balancing the individual right against the right of the society needs to be interpreted fairly so that no innocent person is unnecessarily involved in a case and kept under detention; that the learned trial court while rejecting the bail of the petitioner through order dated 02.05.2024 has been influenced by the gravity of the allegations without evaluating the role of the petitioner in the light of the prosecution version of the case; that deprivation of liberty pending trial amounts to punishment which is only justified in the circumstances in which the involvement of an accused appears to be *prima facie* true and besides there is apprehension of his misusing the concession of bail by tampering with the prosecution evidence and absconding at the trial; that the courts owe more than a verbal respect to the principle that punishment begins after conviction and that every person is deemed to be innocent until duly tried and found guilty; that the offences alleged against him carry alternate punishment as

well and, as such, refusal to grant bail to him would be an unjust punishment before trial; that there is no question of misusing the concession of bail by him who has been serving the government for last more than 20 years having unblemished service career to his credit and that he shall abide by any conditions as may be imposed by this Court.

3. The respondent-UT through Crime Branch, Jammu has resisted the bail petition on the grounds that none of the legal rights of the petitioner stands violated as he was arrested on account of his involvement in heinous offences under case FIR No. 19/2024. That the petitioner seeking bail was posted as Assistant Treasury Officer at Sub Treasury Office, Dharmari and being the immediate and senior most Officer over there. He was under a legal and moral obligation to audit/check the records as well as the working of his subordinate officials under his control which he deliberately ignored in the backdrop of a criminal conspiracy hatched with other co-accused and allowed the preparation/signing of fake and forged bills/vouchers repeatedly w.e.f. 04.05.2023 to 01.03.2024 in relation to two major heads i.e. 8342-NPS (New Pension Scheme) and 2071 (Pension Head) thereby projecting liability through his Credential Code i.e. XX01, of an amount of Rs.1,38,17971/- at different intervals. That the criminal act of the petitioner/accused Ajeet Kumar facilitated co-accused Ali Hussain Shah and Balbir Singh to misappropriate the government exchequer. That the petitioner/accused very cleverly and as a result of an afterthought issued an order dated 13.09.2023 with regard to delegation of

his own powers to accused Balbir Singh for operating the Credential Code XX01 despite his knowledge that misappropriation of government money was going on since 04.05.2023. That the petitioner, as a result of criminal conspiracy and with guilty intention, kept signing the fake and forged bills/vouchers thereby creating false liability. That all the accused in the case including the petitioner came to be arrested on 14.03.2024 by SHO Police Station, Arnas where-after on the next day i.e. 15.03.2024 the investigation in the case FIR in question was taken over by the respondent agency vide PHQ Order No. 538 of 2024 dated 11.03.2024. That upon the arrest of the accused on 14.03.2024, remands were taken from the competent Magistrates/Courts from time to time for a total period of 90 days in between 15.03.2024 to 12.06.2024. That during investigation of the case, it was found that misappropriated amount has been transferred into various account numbers of the different Bank Branches held by different beneficiaries/account holders all over the India on account of which fact the involvement of other persons could not be ruled out regarding the ascertainment of which the Investigating Agency reserves its right of further investigation notwithstanding the filing of the preliminarily charge sheet against the accused including the petitioner for the commission of offences punishable under Sections 409, 420, 467, 471, 477-A, 120-B IPC. That as per the facts and circumstances which enumerated during the course of investigation in the case, the statements of the witnesses, bank records, official communications and expert

reports, it was found that co-accused Ali Hussain Shah, the then MTS of the Treasury concerned having domain over Credential Code AO01 (Auditor level) after hatching criminal conspiracy with the co-accused, namely, Balbir Singh, then Accounts Assistant of the Treasury concerned having domain over Credential Code AS01 (Superintendent level) and the present petitioner then Assistant Accounts Officer posted as ATO (Assistant Treasury Officer) having domain over the credential code XX01, despite being custodians of the Treasury and having entrustment of the public money, with criminal intention, dishonestly prepared fake and forged bills/vouchers of two major heads i.e. Pensions-2701 and NPS 8342 w.e.f. 04.05.2023 to 01.03.2024 repeatedly in different intervals after falsification of accounts, uploaded the manual forged bills/vouchers and created liability through AO01, AS01 and XX01 thereby misappropriating an amount of Rs.1,38,17971/- for their wrongful gain and corresponding losses to the UT exchequer by means of cheating and fraud. That the petitioner with criminal intention and in connivance with other accused persons kept signing the fake and forged bills/vouchers with intention and knowledge, for creating the liability and thereby facilitated the other accused persons to misappropriate the government exchequer. That the petitioner in order to avoid his liability issued an order as a result of afterthought whereby he delegated his own powers to accused-Balbir Singh for operating the Credential Code XX01 despite knowledge that misappropriation of the government money has been going on since

04.05.2023 because the first transaction of Rs.401985/- had taken place on the said date and second transaction of Rs.580864/- on 15.06.2023.

4. I have heard learned counsel for the parties.
5. The learned counsel for the petitioner, Mr. P.N.Raina, Senior Advocate with Mr. J.A.Hamal, Advocate, while reiterating his stand already taken in the bail petition contended that petitioner is innocent and has not committed the alleged offences in the light of the statutory definitions of the same. That although his innocence appeared during the preliminary enquiry as well as during the investigation process, yet the Investigating Agency involved him in the case while ignoring the principles of fairness and transparency which necessitated the unearthing of actual facts. He submitted that the Investigating Agency has not been able to ascertain during investigation of the case that even a single penny out of the alleged fake withdrawals has been credited to the account of the petitioner. That the petitioner being a responsible Officer in the treasury concerned as ATO had to trust the subordinate officials especially co-accused namely, Balbir Singh, the then Accounts Assistant and Ali Hussain Shah, the then MTS of the treasury concerned. That the co-accused Ali Hussain Shah MTS Official by committing the breach of trust prepared false documents which were signed in good faith without any dishonest intention and which fact came to be noticed by the petitioner himself whereupon he apprised about the matter to his superior officers. The learned Senior Counsel submitted that the Investigating Agency has not been able to



ascertain that even a single penny out of the embezzled amount has been credited to the account of the petitioner or any of his friends/relatives. He contended that in the facts and circumstances of the case, the petitioner can at the most be only held liable for departmental enquiry on account of his alleged lack of supervision/audit. He further contended that the order of delegation for operating the Credential Code XX01 to co-accused Balbir Singh as alleged could have been only to facilitate the hassle free and prompt treasury business. The learned Senior counsel further contended that even there is no proof of involvement of the said co-accused Balbir Singh in the matter.

6. The learned Senior counsel further submitted that without prejudice to the innocence of the petitioner/accused, even if the allegations against him are supposed to be true for arguments sake, he is still entitled to concession of bail in the light of the law on the subject as interpreted by the Hon'ble Apex Court and the other authoritative High Courts of the Country including this Court from time to time. He submitted that none of the offences alleged against the petitioner attract the bar under Section 480 of the BNSS corresponding to Section 437 of the Code. He submitted that even if the offences punishable under Sections 409, 467, 471, 120-B IPC carry a maximum sentence of life imprisonment, yet the said offences in view of alternate punishments escape the bar under the aforesaid Section of the BNSS/Code. He submitted that the petitioner/accused has been behind the bars since last more than 8 months and his continued detention



despite being innocent tentamounts to his punishment before trial and violates his fundamental right to life and personal liberty guaranteed to him under Article 21 of the Constitution.

7. The learned Senior counsel further contended that it is a settled legal position 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 alternate and where there is also nothing on record to show that the accused if admitted to bail will misuse the concession granted in his favour by tampering with the prosecution evidence and absconding at the trial. He submitted that it is well settled that bar under Section 480 BNSS does not apply where the imprisonment for life is provided disjunctive of death sentence. He contended that the petitioner has served the department for the last more than 20 years and has an unblemished record at his credit. That it is the petitioner/accused himself who noticed the financial irregularities going on in his treasury and reported the matter to his superior officer. The learned counsel further contended that none of the offences alleged against the accused appears to be *prima facie* true in view of the definitions of the said offences which require a guilty mind, dishonest intention called as the *Mens Rea*. He submitted that every government servant irrespective of his rank is supposed to discharge his duties with utmost honesty, fairness and especially with the trust reposed in him and, as such, a superior officer with the power to finally vouch a document is not supposed to be a watcher for his subordinate officials in

whom, the equal trust and responsibility is reposed. The learned counsel submitted that no accusation or involvement of the petitioner could be ascertained during the preliminary enquiry or the investigation process and he has been roped in the matter by misuse of the offence under Section 120-B IPC providing for criminal conspiracy. The learned Senior counsel further contended that the object of bail is to ensure the attendance of the accused at the trial by giving him in the hands of sureties. He submitted that the petitioner/ accused who is already under suspension is not having any document within his custody. The learned counsel further contended that the gravity of the offences which have not been committed by the petitioner cannot ipso facto justify his detention.

8. The learned counsel further contended that the petitioner earlier approached the learned trial court during investigation of the case with the prayer for grant of bail which was denied to him on the grounds having no legal justification. He further contended that the charge sheet in the case was filed by the Investigating Agency after the stipulated period in connection whereof the petitioner also prayed for default bail which too was denied to him by the learned trial court. He contended that petitioner is deeply rooted in the society and there is no question of his misusing the concession of bail and that he shall abide by any conditions that may be imposed in case of his bail.
9. The learned Senior counsel in support of his contentions placed reliance on the authoritative judgment of the Hon'ble Supreme Court of India titled

“Sanjay Chandra Vs. Central Bureau of Investigation” (2012) 1 SCC 40 and submitted that the Hon’ble Apex Court admitted the appellant/accused to bail who was allegedly involved in the economic offences of huge magnitude on the ground that the heinousness of the offence is not the sole ground for consideration of a bail application. He contended that the Hon’ble Apex Court in the said case *inter alia* observed that since the investigation in the case is already over with the presentation of the charge sheet, as such, there is no need of keeping the appellant/accused in custody. He further contended that the Hon’ble Apex Court in the referred case highlighted the object of the bail as to secure the appearance of the accused and the impact of the denial of the bail being tantamounting to violation of the fundamental right to life and personal liberty of an individual.

10. Per contra, learned Senior Additional Advocate General, Ms. Monika Kohli vehemently resisted the bail petition on the grounds that petitioner/accused is involved in serious non-bailable and economic offences touching the interests of the UT who does not deserve the concession of bail. That the petitioner/accused misused his official position as then ATO of the Sub Treasury Dharmari, Reasi and hatched a conspiracy with the co-accused for siphoning the State exchequer to an amount of Rs.1,38,17971/- as a result of generation of false claims through preparation of false documents by finally passing the same as the responsible officer, for payment. The learned State counsel submitted that

the involvement of the petitioner/accused in the commission of crime as conspirator is fully discernable from the fact that he forgot to check/audit the claims being prepared and rooted by the co-accused so much so that he also passed an order delegating his own powers to co-accused Balbir Singh for operating his credential Code XX01 despite knowing that the misappropriation of the government money was going on in his treasury w.e.f. 04.05.2023 when the first fake transaction of Rs.4,01,985/- came to be projected and cleared for payment. She further submitted that the involvement of the petitioner as an active conspirator in the case is evident from the facts and circumstances of the case because without his involvement the offences could not have been committed. She submitted that the case FIR in question bearing No. 19/2024 of Police Station, Arnas came to be registered on the written report of the District Treasury Officer, Reasi revealing mass financial irregularities as a result of the criminal breach of trust and projecting of false claims/vouchers and during investigation of the case by the economic wing of the Crime Branch, Jammu, the commission of offences punishable under Sections 409, 420, 467, 468, 471, 477 A, 120-B IPC came to be fully established against the petitioner/ accused as an active conspirator. She submitted that an amount of Rs.1,38,17971/- was found to have been siphoned from the government exchequer by the petitioner and the co-accused thereby causing a huge wrongful loss to the government exchequer. She submitted that since the whereabouts of the siphoned money at the ultimate ends is yet to be

ascertained, as such, the Investigating Agency has reserved the liberty under law to conduct the further investigation in the case.

11. Learned Senior Additional Advocate General submitted that the petitioner/accused being the responsible officer as the ATO, has failed to discharge his obligations of overall superintendence, vigil, check and audit of the affairs of the treasury as a result of the conspiracy thereby allowing the huge amount of government money to be extracted against false and forged claims by the use of his credential Codes. She contended that the Hon'ble Apex Court and various other authoritative High Courts of the Country including this Court has time and again laid down a catena of guiding principles/considerations to be kept in mind while considering the bail applications in serious non-bailable offences especially touching the economy of the State and which *inter alia* include the gravity of the offences, the circumstances under which the crime is committed, the status and the position of the offender and the impact of the crime on the State. She submitted that the gravity of the offence is a consideration for rejecting the bail application of an accused.
12. She further submitted that the petitioner being an influential person is likely to misuse the concession if granted in his favour by influencing the prosecution witnesses. It was further submitted by the learned State counsel that the trial of the case is at initial stage and the prosecution evidence is yet to be recorded, as such, the release of the petitioner/accused at this stage is likely to have an adverse impact on the

trial of the case. That the release of the petitioner/accused will give a bad signal and will encourage the likeminded government servants for commission of such economic offences to the prejudice of the State.

13. The learned Senior Additional Advocate General in support of her contentions placed reliance on the authoritative judgment of this Court passed in bail application No. 131/2024 titled “Mohd Isaq Bhat Vs. Central Bureau of Investigation” decided on 03.07.2024 in which this Hon’ble Court denied bail to the petitioner/accused who had been caught red handed while accepting a bribe of Rs.18000/- when charge sheet had already been filed against him. She contended that this Court in the referred case observed that though the investigation in the case has been completed and charge sheet is filed, yet if the accused is released prematurely there is a real danger of his attempting to win over the complainant, shadow witnesses and others who are witnesses to the seizure memo etc. The learned counsel submitted that it was further observed by this Court in the referred case that an offence under the provisions of the Prevention of Corruption Act cannot be dealt with the same yardstick that may be applied in case of offences affecting human body or other categories of offences. That it must be borne in mind that offence against a human body may be a crime of passion, may at times result in one man taking the life of another in a fit of anger arising at the moment without premeditation and without any preparation, but offences of cheating, corruption and other white color offences are impossible to be

- committed without serious premeditation. That such type of offences committed by the accused requires a great deal of planning, arrangements and other associations with co-accused persons. The learned counsel submitted that on the analogy of the law laid down in the referred case coupled with the circumstances under which the crime has been committed by a responsible officer dealing with the public money, the bail application needs to be rejected.
14. Before proceeding ahead towards the disposal of the instant petition, it is appropriate to give a brief resume of the facts of the case relevant for disposal of the matter.

A written complaint was lodged by the District Treasury Officer, Reasi, Sh. Qamar Rehman with Police Station, Arnas on 06.03.2024 bearing No. DTR/2023-24/1080-83 dated 05.03.2024 along with an enquiry report of present petitioner/accused bearing reference No. DATJ/TRY/2023-24/12067-12069 dated 04.03.2024, to the effect that upon being informed by the petitioner i.e. Treasury Officer, Dharmari on phone on 03.03.2024 regarding financial irregularity noticed by him in his treasury, he also inspected the said treasury and after scrutinizing the record found that fraudulent payments involving significant amounts of government money have been made from the said Treasury Office, Dharmari to the accounts of co-accused Mr. Ali Hussain Shah MTS of the said treasury on various occasions mainly involving two major heads 8342-NPS and 2071-Pensionary charges/Pensionary benefits. That upon



enquiry from the co-accused ATO as to how the fraudulent payments have been made/processed from his treasury under his control, he informed that while en-cashing the bills on 02.03.2024 against payments made by him on 01.03.2024, it was found that an amount of Rs.9,95,887/- has been made against which there was no voucher available. That upon scrutiny of the record, he found that said payment was made through a separate file of the said amount in addition to the main payment file of that day. That while tracing the amount, it was found that said fraudulently drawn amount was credited to the account of co-accused Mr. Ali Hussain Shah MTS of the said treasury, Dharmari on 01.03.2024. That it was also found on further scrutiny of the record that such further amounts have been processed on various occasions in the past also involving large sums of government money. That it was also found that co-accused Mr. Ali Hussain Shah MTS of the said treasury was dealing with compiling the daily liabilities of the treasury under different heads and processing the payments from the past quite some time by utilizing the logging in credential of AO01, AS01 and XX01 of the treasury through VPN application. That the petitioner/treasury officer also told him that due to network problems in the treasury leading to the non-functioning of the Satellite lease line connection, the treasury payments used to be done by connecting with the mobile phone VPN network. That the said MTS Ali Hussain Shah co-accused while using the VPN network secured the fraudulent payments into his personal account Nos. 028104012000015 and

0105040120000002. That the said official/co-accused also exaggerated the liability figures of the treasury beyond actual vouchers. That from the statements of the treasury officer Dharmari (petitioner/accused), it *prima facie* appears that petitioner-Treasury Officer while authorizing the said MTS official to book the daily liability of the treasury and make payments on his behalf, did not cross check the figures against actual vouchers and also while forwarding the monthly accounts to the office of the Accountant General, J&K, Jammu as a result of which the said co-accused Ali Hussain Shah MTS managed to do the things in his own way.

The enquiry report enclosing the FIR also mentioned the details of the fraudulent payments made/processed from the concerned treasury office, Dharmari which came to be traced during the then ongoing scrutiny of the record by the complainant i.e. DTO, Reasi. The enquiry report enclosing the FIR lodged by the complainant/DTO Reasi also mentioned that it is evident from the scrutiny made by him that the MTS official Ali Hussain Shah (co-accused) manipulated the treasury system for his own benefit as the whole amount has been credited to his own saving accounts mentioned in the enquiry report. That moreover the said MTS official is absent from the duties since 02.03.2024 and his whereabouts are not known.

That on the receipt of the said report, case FIR No. 19/2024 was registered by the Police Station, Arnas under Section 409 IPC against the co-accused Ali Hussain Shah and investigation started which was

subsequently transferred to the economic offences Wing of the Crime Branch, Jammu vide PHQ, Jammu Order No. 538 of 2024 dated 11.03.2024. During the investigation of the case, the petitioner along with co-accused were arrested on 14.03.2024. That during investigation of the case searches were conducted at the houses of the co-accused Ali Hussain Shah but no incriminating documents, cash, check books, gadgets, documents pertaining to moveable/immovable properties were found/recovered. That during the investigation the commission of offences punishable under Sections 409, 420, 467, 468, 471, 477-A & 120-B IPC were found established against the petitioner and the co-accused upon the ascertainment of the fact that co-accused Ali Hussain Shah then MTS of the treasury concerned having taken over the credential Code AO01 (Auditory level) after hatching conspiracy with his co-accused persons, namely, Balbir Singh, the then Accounts Assistant Sub Treasury having taken over credential Code AS01 (Superintendent Level) and the present petitioner, namely, Ajeet Kumar, the then Assistant Accounts Officer posted as ATO (Assistant Treasury Officer) of Sub Treasury Dharmari having taken over credential Code XX01 being custodian of the treasury and having entrustment of the same with criminal intention, dishonestly prepared fake and forged bills/vouchers of two major heads i.e. Pension 2071 and NPS-8342 w.e.f. 04.05.2023 to 01.03.2024 repeatedly at different intervals after falsification of accounts raised the manual forged bills/vouchers and created liability thereby, misappropriating an amount of

Rs.1,38,17971/- for their wrongful gain and the corresponding losses to the UT exchequer by means of cheating and fraud. That misappropriated amount has been subsequently credited to account numbers of different bank branches of different beneficiaries all over the India and the involvement of other persons cannot be ruled out in connection whereof the further investigation of the case is kept open under Section 173 (8) of the Code.

15. The preliminary charge sheet against the petitioner and the other co-accused is reported to be pending disposal before the learned trial court.
16. Keeping in view the perusal of the application, the objections of the Respondent-agency and the consideration of the rival arguments advanced on both the sides in the light of the law on the subject, this Court is of the opinion, that it may meet the ends of justice in case the petitioner/accused is admitted to bail subject to some reasonable terms and conditions.
17. 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.

18. 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.
19. 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.
20. 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.

21. 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;
- ix. The court at this stage is not conducting a preliminary trial but only seeking whether there is a case to go for trial;
- x. 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.
- xi. The facts and circumstances of the case play a predominant role.

22. The Hon'ble Apex Court in **Gur Bakash Singh Sibbia Vs. State of Punjab AIR 1980 S.C. 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 yield 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”.

23. It has been laid down by the Hon’ble Supreme Court in **Sanjay Chandra vs. Central Bureau of Investigation AIR 20012 SC 830** 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 unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.***

24. 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.”*

25. 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.

26. This Court is conscious of the legal position that some of the offences alleged against the petitioner i.e. 409, 467 & 471 IPC carry a maximum sentence of life imprisonment owing to which fact attraction or otherwise of the bar under Section 480 of BNSS, corresponding to Section 437 of the Code is to be addressed to. As hereinbefore mentioned, the bar imposed under Section 480 of BNSS is not confined to the cases where the imprisonment for life is provided as an alternative punishment disjunctive of death penalty. In these offences, even the sentence of life imprisonment is not absolute but as a maximum alternative.
27. In the case in hand, the petitioner is alleged to have committed the offences punishable under Sections 409, 468, 471 & 477 A IPC under a conspiracy. He as a responsible officer being posted as then Assistant Treasury Officer is alleged to have unmindfully and dishonestly skipped his superintendence, supervision, audit and check over the business of his treasury so much so that he delegated his own power of operating the credential Code XX01 to co-accused Balbir Singh. During the investigation of the case which has led to the filing of a preliminary report/charge sheet in terms of Section 193 of BNSS corresponding to Section 173 of the Code, no amount out of siphoned/embezzled government money was found to have been credited to any of his account numbers. The investigation so far conducted and

culminating into the preliminary charge sheet reveals the siphoned amount having been credited to the account numbers of the co-accused Ali Hussain Shah MTS of the concerned treasury. The allegation as per the preliminary charge sheet against the petitioner appears to be his act of sharing criminal conspiracy in the commission of offences under the charge sheet/Challan which *prima facie* is apparent in the facts and circumstances of the case having regard to his criminal negligence to discharge his statutory and official obligations. It is also the case of the prosecution that the petitioner/accused intimated first in point of time, the complainant i.e. District Treasury Officer, Reasi regarding his noticing of financial irregularities in his treasury pursuant to which he under the directions of the latter himself conducted initial enquiry and submitted his report to the District Treasury Officer. It is not the case of the prosecution that any kind of record or document is still lying in the custody of the petitioner which is imperative for further investigation in the case. The petitioner stands arrested in the case along with co-accused on 14.03.2024 and, as such, has been in custody since last more than 8 months.

28. There is nothing on record to suggest that the petitioner, if admitted to bail, will jump over the concession and misuse the same by attempting to influence the prosecution witnesses or by absconding at the trial. Admittedly, as mentioned by the Investigating Officer in the concluding part of the preliminary charge sheet, the further investigation in the case FIR is under way as the ultimate destinations of the siphoned money likely

to be a number of bank accounts throughout the country are to be ascertained with the involvement of any more persons in the FIR. It cannot be ruled out that the Investigating Agency may be during the process of further investigation, able to lay hands on more evidence direct or circumstantial touching the involvement of the petitioner/accused.

29. In the opinion of the Court, the guiding factors/underlying principles that have been from time to time evolved by the Hon'ble Apex Court and various High Courts of our Country including this Court for consideration of a bail application jointly or severally do not justify the denial of bail to the petitioner/accused in the given facts of the case especially the accusation to his extent.
30. This Court in its opinion is fully fortified with the authoritative law laid down by the Hon'ble Apex Court cited as **Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40** also relied upon by the learned counsel for the petitioner, Mr. P.N.Raina, Senior Advocate in which the bail was granted to the appellant who was also involved in economic offences. It is profitable to reproduce the relevant paras 24 and 25 of the judgment for ready reference:-

“24. In the instant case, as we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant

considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating of the scales of justice.”

“25. The provisions of Cr.P.C. confer discretionary jurisdiction on criminal courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.”

31. In **Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280**, the Hon’ble Apex Court has laid down the special factors for taking into consideration while exercising the bail jurisdiction and the relevant para 8 of the said judgment is reproduced as hereunder for ready reference:-

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the



witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

32. The observations of the Hon’ble Apex Court laid down in **State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21** at para 18 of the judgment also deserve a needful mention:

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see *Prahlad Singh Bhati v. NCT, Delhi* and *Gurcharan Singh v. State (Delhi Admn.)*]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.”



33. The Hon'ble Apex Court in Sanjay Chandra's case cited supra has *inter alia* held at para 40 of the judgment, "the grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon, whenever his presence is required."
34. A criminal court while considering a bail application in case of non-bailable offences attracting no immediate statutory bar and in respect of which the court is vested with the discretion shall consider the relevant factors/guiding principles having been passed by the authoritative courts from time to time and hereinbefore mentioned in a justice oriented and realistic way without being influenced by the gravity of allegations. The *prima facie* involvement of the accused in the light of the quality of evidence should be predominating factor.
35. As hereinbefore mentioned, the Hon'ble Apex Court in its judgments cited as **Siddharam Satlingappa Mhetre Vs. State of Maharashtra decided on**

**02/12/2010, AIR 2011 SC 312 and Sushila Aggarwal and others vs. State (NCT of Delhi) and Another decided on January 29, 2020 by a larger bench 2020 SC online 98**, has interpreted law on the subject of anticipatory bail with a very wide outlook and while interpreting the concept of liberty guaranteed under Article 21 of the Constitution of our country in a flexible and broader sense. It has been *inter alia* observed by the Hon'ble Apex Court in the aforesaid judgments that the exact role of the accused must be properly comprehended before arrest is made. "The inner urge for freedom is a natural phenomenon of every human being. Respect for life and property is not merely a norm or a policy of the state but an essential requirement of any civilized society. Just as the liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order."

36. The authoritative law relied upon by the learned Sr. AAG in support of her arguments in case titled Mohd. Ishaq Bhat V. CBI, decided on 03.07.2024 has been passed in the own facts and circumstances of the case in which the direct allegations were against the petitioner/accused who allegedly was apprehended by the CBI red handed in a trap accepting a bribe of Rs.18000/-.

37. I have gone through the order dated 02.05.2024 passed by the learned trial court on the earlier application bearing File No. 415/2024 dated 02.04.2024 of the petitioner.
38. This Court is of the opinion that a petition in terms of Section 483 BNSS corresponding to Section 439 of the repealed Code shall normally be filed, if needed, by either side as a successive one after the disposal of the first application by a competent court. Although there is no bar under the aforesaid provisions of law contained under Section 483 BNSS in directly approaching this Court yet fairness requires that the competent court of first level should not be bypassed. Practice of directly approaching a High Court by invoking the provisions of Section 483 BNSS is likely to unnecessarily burden this Court with such matters which can in the first instance be addressed under law by the courts below. The competent jurisdictional courts below otherwise in most of the cases use to be already informed of the matter being either the committal/remand Magistrates or the trial courts. It is being observed that generally the advocates practising in the High Courts resort to such practice of directly approaching this Court for their own convenience being unmindful of the petitioner's losing one forum. This Court is also of the opinion that power of a High Court and of the court of Sessions under Section 483 BNSS is not unlimited but the restrictions figuring under the provisions of the Section 480 BNSS corresponding to Section 437 of the repealed Code are deemed to be

imported in the former (Section 483 BNSS). A compelling justifiable ground or a circumstance should be made out for directly approaching the High Court or a court of Sessions under Section 483 BNSS for grant or cancellation of bail.

39. In the backdrop of the aforementioned discussion, the petition is allowed and the petitioner/accused is admitted to bail in the case FIR No. 19/2024 of Police Station Arnas, Reasi under Sections 409, 420, 467, 468, 471, 477-A & 120-B IPC subject to his furnishing of surety and personal bonds to the tune of Rs.1 lac each respectively to the satisfaction of learned Registrar Judicial of this Court and the Jail Superintendent concerned. This order shall, however, be subject to the following conditions:

- 1) the petitioner/accused shall not directly or indirectly make any inducement, threat or promise to any prosecution witnesses so as to dissuade them from disclosing the real facts to the learned trial court or to the Investigating Officer in view of the reported further investigation.
- 2) the petitioner shall make available himself to the Investigating Officer of the case if so directed during the reported further investigation of the case, if any.
- 3) the petitioner shall remain punctual at the trial of the case.
- 4) the petitioner shall not leave the limits of the UT of Jammu and Kashmir without prior permission of the learned trial court.

5) the surety bond of Rs. 1 lac should be furnished on behalf of the petitioner/accused by two persons amongst his relatives in equal amounts.

40) It is very needful to mention that nothing in this order shall be construed as any prejudging of or interference with the merits of the case. In case the requisite surety/bail bonds are furnished and attested to the satisfaction of the learned Registrar Judicial of this Court, the Registry shall issue an order directing the Superintendent Jail concerned where the petitioner is presently lodged for his release in the instant case subject to his furnishing the requisite personal bond to the satisfaction of the said Superintendent Jail concerned.

41) Application stands disposed of.



**(Mohd. Yousuf Wani)**  
**Judge**

**JAMMU :**  
25.11.2024  
Pawan Chopra

Whether the Order is speaking: Yes  
Whether the Order is reportable: Yes