

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

Case No. Crl A(D) No. 50/2025

Reserved on: 08.12.2025

Pronounced on:-16.12.2025

Uploaded on:- 16.12.2025

Whether the operative part or
full judgment is pronounced

Mian Abdul Qayoom

.....Petitioner/Appellant(s)

Through: M/s S Muralidhar & Z.A Qureshi, Sr.
Advocates with
Mr. Amandeep Singh, Mr. Mian Rauf
Ahmed and Mr. Babar Bilal Malik,
Advocates

Vs

Union Territory of J&K and
ors.

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG with
Ms. Sagira Jaffar, Assisting counsel.

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE**

(JUDGMENT)

Shahzad Azeem, J

1. The appellant besides challenging the order passed by the learned 3rd Additional Sessions Judge, Jammu, Designated Court under Section 22 NIA Act [the trial Court] on Sept. 27, 2025 in application titled, **Mian Abdul Qayoom Vs. UT of J&K**, whereby and whereunder, the trial Court has rejected the bail

application, has also prayed for grant of bail on the medical ground.

FACTS

2. For the limited purpose of deciding the present appeal, the prosecution case in brief, is that on the basis of an information received at Police Station, Lal Bazar on Sept. 24, 2020, that Mr. Babar Qadri, Advocate has been shot at by unknown terrorists, a case being FIR No. 62/2020 under Section 307 IPC, 7/27 Arms Act, 16/18 UA(P) Act came to be registered and investigation commenced. Meanwhile, Mr. Babar Qadri, Advocate, has succumbed to the bullet injuries, therefore, initially, 06 accused, one of whom died, were arraigned, except the appellant and thus on culmination of investigation, a final police report was laid before the Special Judge Designated under NIA Act, Srinagar on May 5, 2021 for commission of offences under Sections 16/18/20/39 UA(P) Act, Section 302 IPC and 7/27 Arms Act.

3. It is equally noteworthy that on the basis of an application for further investigation moved by the father of the deceased, Babar Qadri, Advocate, on July 20, 2023, the investigation of the case was also transferred from the State

Police to State Investigation Agency (SIA) and SIT was constituted however, as the complicity of appellant alleged to have been surfaced, therefore, notices under Section 41-A Cr.PC were served and formally appellant came to be arrested on June 25, 2024.

4. Later on, trial of the case was transferred to the Designated Court under NIA, Act, Jammu by the orders of the High Court in view of surcharged atmosphere on account of the alleged dominant position and influence enjoyed by the accused/appellant, it was not possible to have the free and fair trial at Srinagar.

5. Accordingly, supplementary charge-sheet came to be filed against the appellant on December 19, 2024, whereafter, formal charges were drawn up against the appellant under Section 16 (1) (a)/18/38 of UA(P) Act, vide order dated, August 18, 2025.

6. The appellant has moved an application for enlargement on bail before the trial Court on the medical ground, however, same was dismissed vide impugned order dated Sept. 27, 2025 by the trial Court mainly on the ground that appellant has been provided necessary medical treatment; he is an influential person and is a member of terrorist organization, besides the case came

to be transferred by the High Court as no Advocate at Srinagar was willing to plead the case of the complainant party and the appellant himself is an Advocate thus, has tremendous influence, therefore, there is threat perception to the witnesses.

GROUND & SUBMISSIONS

7. The appellant has impugned the bail rejection order and also seeks his enlargement on bail mainly on the ground that alleged complicity of the appellant has surfaced after the lapse of 02 years and formally came to be arrested on June 25, 2024, however, due to continuous incarceration, the appellant aged 77 has been suffering from a number of medical conditions, therefore, is in need of urgent medical care, but same is neither available nor possible in the jail.

8. To be more specific, appellant seeks his enlargement on bail exclusively on medical and humanitarian grounds and in support thereof went onto submit that he is suffering from Coronary Artery Disease (CAD) as he developed Cardiac Arrhythmia due to Sinus Node Disease with Atrial Fibrillation. Appellant was operated upon at Super Specialty Hospital, Government Medical College, Jammu and a permanent pacemaker said to have been implanted in his heart on

November, 11, 2024. He is also suffering from Urological Ailments, as he is a known case of Benign Prostatic Hyperplasia (BPH) and Urethral Stricture, with single kidney. The appellant is also diagnosed with Glaucoma during his incarceration with dangerously elevated Intraocular Pressure (IOP). He is also stated to have diagnosed for Debilitating Neurological & Orthopaedic complications and as such, due to his continuous deteriorated health conditions, he is advised to take approximately 20 medications in a day and constant monitoring of vital parameters, as such, same cannot be managed in the restrictive and resource-constrained jail environment.

9. Besides delineating the above health conditions, it has been further submitted that the appellant is a known case of Hypertension, and Diabetic Mellitus which are life threatening disease and in case, he is not enlarged on bail, there is every likelihood of his succumbing to these life consuming diseases.

10. Learned senior counsel argued that the medical reports of the appellant would unerringly shows that the appellant is in continuous need of medical care, who has been got examined on 36 occasions by now, therefore, there is necessity of palliative

care and any delay or prolonged incarceration would be detrimental to health of the appellant.

11. Learned senior counsel referred us to the medical reports and course of treatment undergone by the appellant over the relevant period and argued that continuous medical checkup is sufficient to prove that the appellant is in need of intensive medical attention, therefore, keeping in view the mandate of Article 21 of Constitution of India, the appellant may be admitted to bail on health ground.

12. On the other hand, the respondents have filed objections and apart from opposing the prayer for bail, the learned Sr. AAG has referred us to the objections wherein, besides giving factual narration of the prosecution case, submitted that during further investigation, when involvement of the appellant came to the fore, he reluctantly joined the investigation. It has been further alleged that the appellant conspired with terrorists and their handlers across the border to eliminate the deceased, who was a young budding Lawyer and was threat to the appellant because of his growing popularity amongst the legal fraternity.

13. Appellant said to have been actively involved in terrorist related activities, and that it was on his instructions that the militant outfit launched the attack which ultimately resulted in the death of the Late Babar Qadri, Advocate.

14. While opposing the bail plea of the appellant on the medical ground, it is submitted that appellant has been regularly provided the required medical treatment, as the jail authorities are under statutory obligation to ensure proper medical care, therefore, the appellant does not deserve concession of bail as he failed to demonstrate any exceptional or life threatening circumstance for his release on medical ground.

15. The respondents have also given details of his medical treatment during custody from implantation of pacemaker- (life warranty amounting to Rs. 1,39,232/- excluding other expenses) to details of continuous follow-up, including specialized treatment provided to the appellant while his lodgment in the jail.

16. The respondents have also placed reliance on the latest medical examination of the appellant held on October 20, 2025 wherein, his condition is stated to be stable, therefore, prays for dismissal of the bail application in view of nature and gravity of

offences for which he is facing trial and also in the light of his past conduct.

ANALYSIS

17. The appellant primarily seeks his enlargement on medical and humanitarian grounds, therefore, the Court is required to analyze his current health status, so as to ascertain need for immediate medical intervention, in view of any life threatening condition warranting urgent release on the ground that the jail authorities are not in a position to provide proper medical care, but his health condition demands.

18. It is important to note that in the memo of appeal, appellant is on admission that during lodgment in jail, he was operated upon in Super Specialty Hospital, GMC Jammu and a permanent pacemaker came to be implanted on November 11, 2024.

19. In this regard, while shuffling through the latest medical health status of the appellant, dated Oct. 20, 2025, the appellant found to have been undergoing regular follow up in the department of Urology, Cardiology, Radiology, Endocrinology and Ophthalmology at GMCH and SSH Jammu, respectively. The

medical report further abundantly makes it clear that the health condition of the appellant is also stable.

20. Learned Senior Counsel though sketched out a case on the basis of number of visits of appellant for medical examination that frequent visits to hospital for medical examination demonstrates the deteriorating health condition of the appellant, and necessity of immediate medical treatment, nonetheless, it is well settled that it is not every sickness or infirmity that entitles the accused to be enlarged on bail, unless jail authorities stated that medical facilities in the jail is not enough for the under trial, he is not entitled to bail, particularly when he is facing trial for the alleged offences of carrying out terrorist related activities and there is statutory embargo to grant the bail, unless certain conditions are fulfilled.

21. It is trite law that bail on medical grounds is to be granted only in exceptional circumstances where the medical condition is so serious that it cannot be adequately treated in custody and the requisite facilities are unavailable in jail. The initial burden to establish such circumstances lies on the appellant, however, the appellant has not brought on record any material to that effect, except for the number of hospital visits,

notwithstanding the fact that he even underwent surgery for pacemaker implantation during custody, which has been reportedly done successfully and now cardiac rhythm found normal.

22. Although while considering the prayer for grant of bail on medical grounds, Court need not to go into the merits of the case, but, when bar of Section 43-D(5) of the UA(P) Act comes into play, he must establish a strong *prima facie* case demonstrating that, despite being required to face trial for alleged terrorist-related activities, there exists overwhelming material carving out an exception for his enlargement on bail. It is so because prolonged incarceration and other humanitarian grounds, however, deemed insufficient to override the statutory bar, in the absence of satisfaction of the conditions prescribed under Section 43-D (5) of the UA(P) Act.

23. For this limited purpose, when we navigated through the objections and also the case file/record, it appears that due to influence of the appellant, investigation of the case could not properly be carried by the State Police, thus, the case was transferred to the State Investigation Agency (SIA) and thereafter, on the basis of specific allegation of harassment and threats to

the family of the deceased Advocate, who were forced to sell off the residential house also and in view of the fact that it has become difficult to hold free and fair trial at Srinagar, the case was transferred by the High Court from the Court of Special Judge Designated under NIA Act, Srinagar to Special Judge Designated under NIA Act, Jammu, particularly in view of specific allegation that material witnesses are facing threats to depose in favour of the accused and also no counsel was willing to render legal assistance.

24. When the present application is tested on the touchstone of these overwhelming facts which have necessitated for initial transfer of case to SIA and thereafter, transfer of trial from Srinagar to Special Judge, Jammu, it prima-facie establishes that the presence of appellant who also remained leader of Bar Association for considerable long time would necessarily hamper the free and fair trial of the case, as majority of the prosecution witnesses have yet to enter the witness box.

25. The learned counsels for appellant have also relied upon the following judgments;

(i) **Manish Sisodia Vs. Directorate of Enforcement;**

(2024) 12 SCC 660;

(ii) **Shoma Kanti Sen Vs. State of Maharashtra and anr; (2024) 6 SCC 591;**

(iii) **Jalaluddin Khan Vs. Union of India; (2024) 10 SCC 574;**

(iv) **Dr. P.V Varavara Rao Vs. National Investigation Agency and anr.; 2021 1 SCC OnLine Bom 230;**

(v) **Asif Latief Naik Vs. UT of J&K; 2025 SCC OnLine J&K 9 and**

(vi) **Vijay Agrawal Vs. Directorate of Enforcement; 2022 SCC OnLine Del 4494.**

26. In **Manish Sisodia**, the Hon'ble Supreme Court was dealing with the Constitutional right to speedy trial and embargo of Section 45 of PMLA, however, in the case on hand, the appellant is seeking bail on medical ground and not that trial has been protracted or unduly delayed.

27. In **Shoma Kanti Sen**, Hon'ble Supreme Court has shown indulgence after returning a prima-facie opinion that the allegation of the prosecution that the appellant is a member of terrorist organization or that she associate herself or professes to associate herself with a terrorist organization are not true and

returned the finding that Section 43-D (5) of the 1967 Act would not be applicable. Therefore, on facts, case on hand is materially different as there is no factual foundation laid in the case on hand that allegations are not *prima-facie* true.

28. Again Hon'ble Supreme Court in **Jalaluddin Khan**, has come to the conclusion that from the reading of the charge-sheet it is not possible to record a conclusion that there are reasonable grounds for believing that the accusation against the appellant of commission offences punishable under UAPA is *prima-facie* true. Therefore, the appellant from this judgment also cannot draw any benefit.

29. In **Dr. P.V Varavara Rao**, the High Court has specifically held that despite the requirement of constant monitoring no such facility was made available and there was absence of trained medical staff to look after the inmates like the undertrial suffering from various health conditions at an advanced stage. Therefore, in the said case, on the ground of inadequate facilities in the hospital attached to the jail, the relief was granted. To the contrary in the present case, the appellant has been provided proper medical care as and when necessitated.

30. The appellant has placed reliance on **Asif Latief Naik**, however, in that case, the Court has come to the conclusion that the appellant was required surgical intervention third time which was not possible while in jail.

31. In the case of **Vijay Agrawal (supra)**, the bail was granted on medical ground on finding that the kind of ailments that the petitioner suffering from are really very painful and needs immediate redressal and also categorically observed that order granting the bail will not be taken a precedent.

32. From the above analysis, it is conspicuous that the judgments relied upon by the learned counsels for the appellant are clearly distinguishable and have no application to the facts and circumstances of the instant case, particularly, due to mark difference of factual foundation of the cases relied upon and the one on hand.

33. Although the appellant has enclosed a tabulated summary of his medical examination in order to demonstrate that frequent medical checkups are the proof of his dire need of not only medical but equally of palliative care, nonetheless it is equally true that there is nothing placed on record to the satisfaction of the Court that the jail authorities or for that

matter, the Government in any manner failed in carrying out the duty to provide medical care to the appellant. Conversely, it is seen that at each occasion, the authorities have ensured proper medical examination and in this regard, appellant has himself demonstrated that he has been taken for medical examination as many as 36 times.

34. In absence of any alarming or urgent necessity supported by medical report to suggest that the respondents failed to provide the requisite medical facility, in that event, the discretion for granting bail is unwarranted, particularly when initially investigation and subsequently trial of the case also has been transferred in view of the alleged influence of the appellant, because while exercising the discretion, for grant of bail, the Court has to harmonize the conflicting right of individual freedom and societal interest.

35. The latest health status of the appellant does not indicate any latest medical emergency, nor the need for immediate intervention, nor any life-threatening condition warranting urgent relief. There is nothing on record to the satisfaction of the Court that the authorities are either

handicapped or unable to manage the appellant's health condition while he remains in custody.

36. As a necessary corollary to the above made discussion, it can be safely summarized that palliative care is not a separate or independent ground that may override the medical ground, rather it is a subset of medical ground, therefore, once bail on medical grounds do not find favour with the Court, same hold equally good on the ground of palliative care. It is to be noted that while medical care seeks to treat and potentially cure disease, at the same time, palliative care focuses on holistic relief from the burden of serious illness to help patients live as fully as possible, therefore, both are essential components of comprehensive healthcare.

37. The bail on medical grounds can be granted only in exceptional cases where, medical condition is so serious that it cannot be adequately treated in custody and the requisite facilities are unavailable in jail.

38. However, to the contrary, rather the record shows that the appellant has all along been provided with the advance and specialized treatment whenever necessitated, therefore, keeping in view the present health status of the appellant and the very

fact that because of allegation of threats to the family members of the complainant and also witnesses, the trial was also shifted from Srinagar to Jammu, the enlargement of the appellant on bail at this stage would prejudice the constitutional right to a free and fair trial. Reference may also advantageously be had to the authoritative pronouncement of the Hon'ble Supreme Court in

State of Karnataka Vs. Sri Darshan etc.; 2025 SCC OnLine SC 1702.

39. In view of the above, no illegality is found to have committed by the trial Court while passing the impugned order subject matter of challenge nor any ground is made out for enlargement of appellant on bail, accordingly, the appeal being devoid of merit, is dismissed.

(SHAHZAD AZEEM)
JUDGE

JAMMU
16.12.2025
Tarun/PS

(SINDHU SHARMA)
JUDGE

Whether order is speaking: Yes
Whether order is reportable: Yes