

**HIGH COURT OF AZAD JAMMU & KASHMIR**



Cr. Revision petition: 128/2025;  
Institution: 26.03.2025;  
Hearing: 25.06.2025;  
Decision: 27.06.2025.

Muhammad Shahbaz Ali S/o Muhammad Yaseen, R/o Boha Batalla  
Post Office Chaksawari Tehsil Islamgarh District Mirpur.

.....Petitioner

**VERSUS**

1. The State through Police Station Chaksawari;
2. Asif Hussain S/o Muhammad Arif, R/o Dheri Brotiyan Post Office  
Chaksawari Tehsil Islamgarh District Mirpur.

....Respondents

**REVISION PETITION**

**BEFORE:- Justice Chaudhary Khalid Rasheed, J.**

**APPEARANCES:**

Mr. Rashid Nadeem Butt, Advocate for the petitioner.  
Mr. Asif Bostan, Advocate for the respondent No.2.  
Mr. Muhammad Khalil Ghazi, AAG for the State.

**VERDICT:**

The captioned revision petition is hereby accepted.

**JUDGMENT:**

**FOREWORD:**

The captioned revision petition has been preferred against  
the order passed by learned Sessions Judge Mirpur dated 21.03.2025,

whereby post arrest bail application filed by accused/petitioner has been rejected.

Precise facts forming background of the instant petition are, on the complaint of Asif Hussain, FIR No.17/2025 was registered at Police Station Chaksawari in the offence under section 298/A-APC on 06.02.2025.

On arrest in the supra mentioned case, the accused/petitioner filed an application before Senior Civil Judge/Judicial Magistrate Mirpur for his release on bail. After hearing arguments pro and contra the learned Magistrate rejected the application vide order dated 07.03.2025. The accused filed second application before Sessions Judge Mirpur for his release on bail which also met the same fate through the impugned order dated 21.03.2025, hence the captioned revision petition.

**STANCE OF THE PETITIONER:**

The learned counsel for the petitioner vehemently argued that the alleged offence under section 289-A/APC is bailable, hence the petitioner was entitled to get bail as of right but the Courts below failed to understand the relevant law as learned Sessions Judge erroneously held that section 295-A/APC is also attracted which falls within the prohibitory clause of section 497 Cr.P.C., thus requested for the acceptance of the instant revision petition. He placed his reliance on 2022 SCR 714.

**REFUTATION OF THE RESPONDENTS:**

The learned AAG as well as the learned counsel for complainant on the other hand opposed the revision petition by contending that the petitioner is fully linked with the offence with which he has been charged, hence is not entitled to be enlarged on bail.

I have heard the learned counsel for the parties, gone through the record of the case with utmost care and caution.

**COURT OBSERVATIONS AND RELEVANT LAW:**

It is a well settled precept of law that in bailable offences, bail can be claimed as a matter of right. Reliance may be placed on 2022 SCR 714, wherein at page 717 it has been held as under:

“There is no denial that the alleged offences are bailable in which the punishment provided under law is three years imprisonment. In such like cases, the grant of bail is a right and not a grace.”

The offence under section 289-A/APC is bailable, hence the refusal of bail by the Courts below is not only unjustified but also a deviation from the statute as Courts are always expected to interpret law as it is and not as it should be, as has been held in 2009 SCR 345. The relevant observations recorded at page 353 are reproduced as under:

“The law has to be interpreted as it is and not as it ought to be.”

The same principle has been laid down in plethora of judgments, some of them are 2001 SCR 481, 2013 SCR 134, 2015 SCR 744.

It is commonly noticed that subordinate Courts while deciding bail applications, deny the concession of bail merely by considering the consequences thereof and supposing to face public sentiments whereas in such a situation it is the responsibility of the Government to consider the public sentiments and proper provision of law has to be added as an administrative justice in order to enable the Courts to pass appropriate sentences to the culprits of such type of offences but the Courts cannot reject a bail application of a bailable offence by only considering the public sentiments. The interpretation of Statute by Maxwell, 7<sup>th</sup> Edition, it has been observed as under:-

“The rule of construction is to intend the Legislature to have meant what they have actually expressed---‘it matters not, in such a case, what the consequences may be ---- Where, by the use clear and unequivocal language capable of only one meaning, anything is enacted by the Legislature, it must be enforced, even though it be absurd or mischievous ---. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the Courts as to what is just or expedient.”

The learned Sessions Judge Mirpur also travelled beyond the scope of the law governing the bail matters as it has been wrongly

held that offence under section 295-A/APC is also attracted. No doubt, a Court can convict an accused person in any offence though not mentioned in the report submitted under section 173 Cr.P.C. if is attracted and proved from the evidence produced by the prosecution at the conclusion of the trial but at a bail stage it cannot be denied in bailable offence on the ground that some other non-bailable offence is also attracted rather it is beyond the jurisdictional competence of the Court because a right of bail given by the statute cannot be snatched in both cases of post and pre-arrest bail cases.

The learned AAG also opposed the grant of concession of bail to the petitioner on the ground that some non-bailable offence also attracted but it is also very unfortunate that one of the principal law Officer of the state is of the opinion that some non-bailable offence also attracted but when confronted that why that offence neither added nor mentioned in the final report submitted under section 173 Cr.P.C., he remained mum and failed to reply the query of the Court which reveals that investigating agency instead of fulfilling its duty tried to put all liability of the case on the shoulders of the Court which is a regrettable and unfortunate pursuit rather they are expected to consider the opinion of one of its principal law officer of the state as per the requirement of law and to fulfill its duty instead of escaping from its legal obligations by putting all burden on the Courts.

It is also pertinent to mention that the Honourable Apex Court in the reported case supra mentioned also held at page 723 in para 11 of its judgment that:

“11. When read all sections (496, 497 and 498) together there remains no uncertainty that while deciding an application, may it be for bail after arrest or pre-arrest in bailable offences the Court is left with no discretion to refuse the concession to an accused as in such eventuality the grant of bail is a right and not favour, whereas in non-bailable offences the grant of bail is not a right but concession of grace.”

The plain perusal of the above dictum of the Apex Court left no option to all subordinate Courts except to grant bail whether post or pre-arrest in all bailable offences as a matter of right. It is not out of context to mention that as per the command of the Azad Jammu & Kashmir Interim Constitution all the subordinate Courts are bound to follow the verdicts of Supreme Court and High Court, thus the impugned judgment is not only a clear departure from law but also in violation of the judgments of the Apex Court and command of the constitution. The copy of this order shall be sent to the Registrar of this Court to circulate it to all the subordinate Courts for compliance.

**DISPOSAL:**

The sum and substance of the above discussion is, the captioned revision petition is hereby accepted and it is ordered that the accused petitioner shall be released on bail forthwith provided he furnishes bail bonds in the sum of Rs.1,00,000/- consist of two local

sureties as well as personal bond in the like amount to the satisfaction of any Judicial Magistrate Mirpur, if not required in any other case.

**Circuit Mirpur;**

**27.06.2025.**

(Approved for reporting)

**JUSTICE**

**JUSTICE**