IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Shariat Appellate Jurisdiction)

PRESENT:

RAZA ALI KHAN, J.
KHALID YOUSAF CHAUDHARY, J.

CRIMINAL APPEAL No. 27 OF 2025
(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 19.05.2025 passed in Criminal Revision No. 115 of 2025)

Sumaira Bibi widow of Bilal Hussain,

…Appellant(s)

VERSUS

Affija Muktikhar alias Affia d/o Muhammad Muktikhar and others.

…Respondent(s)

Appearances:

For the Appellant(s):	Mr. Sajib Maqbool, Advocate.
For the Respondent(s):	Raja M. Saeed Khan, Addl. Advocate-General & M/s Manzoor Hussain Raja & Miss Asia Khokhar, Advocates.

Date of hearing: 07.01.2026

JUDGMENT:

***Raza Ali Khan, J*:-** This direct appeal is stem from the judgment dated May 19, 2045, delivered by the Shariat Appellate Bench of the High Court *(hereinafter to be referred as 'the High Court')* whereby, the revision filed by the respondent was accepted.

2. The factual matrix giving rise to the present appeal is that FIR No. 64/2024, registered under Sections 337, 341, and 324 APC, was lodged against the appellant and others on the written information of Muhammad Altaf on September 14, 2024, at 12:15 AM at Police Station *Chikar*. During the course of investigation, the injured victim, Bilal Hussain, succumbed to his injuries, whereupon sections 302 and 34 APC along-with section 15(2) of the Arms Act, 2016 were added. The appellant sought bail before the District Court of Criminal Jurisdiction, Jehlum Valley, on February 24, 2025, which was declined by order dated March 4, 2025. Thereafter, the appellant preferred a criminal revision petition before the learned High Court, which was allowed through the impugned judgment dated May 19, 2025.

3. Mr. Sajid Maqbool, the learned counsel for the appellant, submitted that the respondent is nominated as the principal accused in the FIR, and her involvement is clearly spelt out and corroborated by the police investigation, including recovery of the alleged weapon (knife) at her instance in the presence of independent witnesses. He submitted that the High Court, while entertaining the revision petition, granted bail on statutory grounds not even

invoked by the appellant, thereby exceeding the scope of the pleadings, which is procedurally impermissible. He further contended that it is a settled principle of law that at the stage of bail the Court is required to make only a tentative assessment of record whereas, the High Court, by undertaking detailed evaluation of evidence and making observations touching the merits of the case, transgressed the well-recognized limits governing bail jurisprudence.

4. Conversely, Mr. Manzoor Hussain Raja, learned counsel for the respondents, submitted that although the police report under section 173 C.rPC had been presented before the District Criminal Court, Jhelum Valley, the complainant chose to file a private complaint, independent of the police report, as she did not wish to rely upon it. He emphasized that in the context of a private complaint, the accused cannot be lawfully remanded to custody, in the absence of statutory pre-requisites and therefore, rightly exercised its discretion in granting bail. He further argued that the appellant has failed to point out any legal infirmity or jurisdictional error in the order of the High Court, which was passed strictly in accordance with law; on this premise, dismissal of appeal was prayed for.

5. Raja M. Saeed Khan, learned Additional Advocate-General, adopted the arguments advanced on behalf of the appellant and contended that the offence alleged is of a heinous nature attracting the severest penal consequences. He contended that the High Court acted contrary to settled principles by granting bail to the accused, and such order warrants interference by this Court.

6. We have heard the learned counsel for the parties and perused the record. It is well settled that this Court does not ordinarily interfere with an order passed by the High Court granting or refusing bail. However, such discretion of the High Court must be exercised judiciously, cautiously, and in strict conformity to settled principles consistently laid down by this Court while considering an application for bail, the relevant factors include: (i) existence of prima facie or reasonable grounds to believe the accused committed the offence; (ii) nature and gravity of the accusation; (iii) severity of punishment upon conviction; (iv) likelihood of accused's absconding; (v) probability of repetition of offence; (vi) possibility of influencing prosecution witnesses; and (vii) risk of obstruction of the course of justice.

7. In the present case, FIR No. 64/2024, registered under Sections 337, 341, and 324 APC at Police Station Chikar, prima facie attributes the fatal injuries to the respondent. However, at this stage, the question whether she actually committed the offence is to be determined after a full trial and recording of evidence. Upon careful consideration, we are of the view that the learned High Court was justified in granting bail to the respondent under Section 497(1) Cr.P.C., keeping in view that the respondent is a female and, considering the prevailing social milieu of Azad Jammu and Kashmir, the likelihood of her absconding, tampering with evidence, influencing witnesses, or repeating the offence appears minimal.

8. However, we find merit in the contention that the High Court exceeded the permissible bounds by making observations touching upon the merits of the case,

particularly remarks suggesting absence of direct evidence linking the respondent with the fatal act. Such observations were neither warranted nor appropriate at the bail stage and carry the potential of prejudicing the trial court. It is a settled principle of law that while deciding bail matters, courts must refrain from recording findings or making definite comments on the evidentiary worth of the prosecution's case.

Accordingly, this appeal is partly allowed. The order of the learned High Court granting bail to the respondent is maintained; however, all observations made therein touching upon the merits of the case are hereby expunged. The trial court shall decide the case strictly on the basis of evidence produced before it, uninfluenced by any observations contained in the impugned judgment.

JUDGE **JUDGE**

Muzaffarabad,
07.01.2026