

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

Bail App No. 280/2023(O&M)

Reserved on : 04.12.2023

Pronounced on: 16.12.2023

Tasadaq Hussain @ Maaka Age
16 years S/o. Amam Hussain
R/o. Langotian Tehsil R. S. Pura,
District Jammu
(Minor through Mother Saleema
Bibi w/o Amam Hussain)

.....Appellant(s)/Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Adv. with
Mr. Waheed Choudhary, Adv.

VS

1. Union Territory of Jammu and
Kashmir th. Station House Officer
Police Station, Bari Brahmana,
District Samba.

.....Respondent (s)

Through: Mr. Vishal Bharti, Dy. AG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

1. The petitioner, who claims to be minor, has filed the present petition through his mother, seeking bail in anticipation of arrest in FIR No. 187/2022 dated 03.10.2022 registered with Police Station, Bari Brahmana, for commission of offences under sections 302, 307, 364, 323, 427, 147 and 148 IPC and section 4/25 Arms Act, after the application filed by the petitioner before the court of learned Sessions Judge, Samba for grant of bail in anticipation of arrest, was rejected.
2. The sole ground raised by the petitioner in the present petition is that he is 16 years of age and student of 11th Class and being juvenile, the case of the

petitioner was required to be considered in accordance with the Juvenile Justice Act and as such, he is entitled to bail in anticipation of arrest.

3. The respondent has filed the response, stating therein that the petitioner is involved in commission of the heinous offences and as such, he is not entitled to bail. It is further stated that on 03.10.2022, the complainant, namely, Abdul Rashid submitted a written application for registration of FIR against the number of accused persons including the petitioner, thereby stating that on 03.10.2022 his maternal uncle, Zakir Hussain alongwith Bashir, Bagh Hussain and Kalu had gone to Balole Nallah, Bari Brahmana for attending the marriage function and while returning when they reached Peer Baba in their Alto Car at about 2240 hours, all the accused persons came there in a Mahindra Load Carrier and due to old enmity, hit the Alto Car and forcibly abducted them in the above said Mahindra Vehicle. After hitting them with deadly weapons threw Zakir Hussain and Bashir at lane No. 03 SIDCO Industrial area near Dabur Factory in a critical injured condition and they took Bagh Hussain with them but Kalu escaped from their clutches and ran away. On receipt of this information, FIR No. 187/2022 dated 03.10.2022 for commission of offences under sections 307, 364, 323, 427, 147 and 148 IPC and section 4/25 Arms Act was registered at Police Station, Bari Brahamana against the accused persons.
4. During the course of investigation, both the injured persons, namely, Zakir Hussain and Bashir Ahmed were taken to GMC, Jammu. During treatment, injured Zakir Hussain succumbed to injuries at Amandeep Hospital, Amritsar and, as such, offence under section 302 IPC was added. During the course of investigation, the statements of injured victims were recorded and search of

the absconding persons, 16 in number, was made, but no one could be arrested. During investigation, the involvement of more accused persons surfaced and on 26.10.2022, six accused persons, namely, Murad Ali, Siraj Din, Lal Hussain, Tariq Hussain, Farooq Ali and Zakir Hussain were arrested and the charge sheet was produced against them before the Sessions Judge, Samba on 20.01.2023. It is further stated that during course of further investigation, one more absconder, namely, Kala Gujjar was also arrested and subsequently charge sheet was produced against him before the Sessions Court, Samba on 12.06.2023. Again on 15.09.2023, one more accused, namely, Mohd. Rayaz was arrested. Fourteen accused persons including the petitioner have absconded since the registration of FIR and despite all possible efforts, the absconded accused persons could not be arrested. The supplementary charge-sheet against Mohd. Rayaz was produced before the Sessions Court, Samba on 04.10.2023 with the request that the proceedings in terms of section 299 Cr.P.C. be initiated against the other accused persons including the petitioner.

5. Mr. Sunil Sethi, learned Senior Counsel appearing for the petitioner has vehemently argued that the petitioner is a minor and as such, he deserves to be enlarged on bail in anticipation of arrest.
6. *Per contra*, Mr. Vishal Bharti, learned Dy.AG appearing for the respondent has vehemently argued that the petitioner has been found to be involved in commission of heinous offence of murder and as such, he cannot seek bail in anticipation of arrest as a matter of right. He further submitted that after the commission of offence, the petitioner absconded along with other accused. He

further submitted that the issue of juvenility raised by the petitioner can very well be considered by the trial court.

7. Heard learned counsel for the parties and perused the record.
8. The allegations against the petitioner are very serious in nature. If the date of birth of the petitioner as is evident from the 10th Class Mark Sheet is taken to be true, then the date of birth is 12.03.2006. The date of occurrence is 03.10.2022, meaning thereby that the petitioner was 16 years and 07 months of age at the time of occurrence. It is beyond any shadow of doubt that the offence under section 302 IPC is a heinous offence and even if the contention of the petitioner is accepted, still he is more than 16 years of age and in terms of Section 15, read with section 18 of the Juvenile Justice Care and Protection Act, 2015, the petitioner can be tried as an adult.
9. Be that as it may, the charge sheet has been filed before the Sessions Court, Samba and prayer has been made by the respondent for initiating proceedings under Section 299 Cr.P.C, the petitioner can appear before the court and the plea of juvenility can be taken care of by the learned Sessions Court, Samba.
10. In view of the above, the bail application is found to be devoid of any merit. The same is, as such, dismissed.

(RAJNESH OSWAL)
JUDGE

Jammu
16.12.2023
Rakesh

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