

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App 169/2023
CrIM(1656/2023)

Kumail Mustafa and Ors.

...Petitioner(s)

Through: Mr. M. A. Rathore, Advocate.

Vs.

Union Territory of Ladakh & Anr.

...Respondent(s)

Through: Mr. T. M. Shamsi, DSGI.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

ORDER
20.12.2023

01. This is an application for grant of bail to the applicants under Section 439 of the Criminal Procedure Code read with Section 31 of the Prevention of Children from Sexual Offences, Act, 2012 (POCSO Act). The applicants are facing trial in case FIR No. 08/2022 for offences under Sections 366-A, 34 of IPC read with Sections 9(g) and 10 of POCSO Act, registered with Police Station, Kargil.

02. The applicants had earlier approached this Court for grant of bail after same was rejected by the Court of learned Sessions, Kargil. This Court considered the bail plea of the applicants in Bail App Nos. 10/2022 and 71/2022 and dismissed the same vide order dated 26th July, 2022 on the ground that the trial was yet to commence and the statement of prosecutrix and other witnesses were yet to be recorded.

03. The learned counsel appearing for the applicants submits that after dismissal of the bail applications by this Court vide order dated 26th July, 2022, the statements of prosecutrix and some other witnesses have been recorded. He further submits that the prosecutrix as also the eyewitnesses whose statement have been recorded have not supported the prosecution case and, therefore, the applicants have become entitled to be released on bail due to changed circumstances. It is pleaded that the applicants again approached the Court of learned Sessions, Kargil, with an application for bail but the

same was not entertained on the ground that their bail plea made before the High Court stands already dismissed vide order dated 26th July, 2022.

04. Having heard the learned counsel for the parties and perused the material available on record, I am of the view that the bail applications filed by the applicants herein were rejected by this Court vide order dated 26th July, 2022 on the ground that at that point of time, the trial was yet to commence and the statements of prosecutrix and eyewitnesses were yet to be recorded. It is because of this reason, the Court while dismissing the bail applications of the applicants clearly held that the bail applications are not being entertained at this stage. Now when the trial has commenced and the statements of the prosecutrix and other eyewitnesses have been recorded, there is no bar in entertaining the fresh bail plea of the applicants in view of the aforesaid changed circumstances. The refusal of the Court of learned Sessions, Kargil in entertaining the bail application of the applicants is not correct in law.

05. Since the trial is going on before the Court of learned Sessions, therefore, it would be appropriate for the learned Sessions Court to consider the bail applications of the applicants afresh in view of changed circumstances.

06. For the aforesaid reasons, this Court is not inclined to entertain this application and same is accordingly **dismissed**, relegating the applicants to the remedy of filing fresh bail applications before the Court of learned Sessions, Kargil in view of the aforementioned changed circumstances. Needless to say in case any such application(s) is moved by the applicants, same shall be entertained and disposed of on merits at the earliest having regard to the directions issued by the Supreme Court from time to time regarding early disposal of the bail application. The counsel appearing for the applicants, shall, however, be permitted to have access to the records for perusal of the statements so far recorded.

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
20.12.2023
“Hamid”