

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

(THROUGH VIRTUAL MODE)

Reserved on: 17.12.2024

Pronounced on: 27.12.2024

Bail App No.02/2024

AJAY SINGH

... PETITIONER(S)

Through: - Mr. Maneesh Rampal, Advocate.

Vs.

UT OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Sumeet Bhatia, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has, through the medium of present petition under Section 439 of the Cr. P. C, sought regular bail in a case arising out of FIR No.184/2022 for offences under Sections 376, 511, 382, 354, 506, 341 and 323 IPC read with Section 8 of POCSO Act registered with Police Station, Reasi, which is stated to be pending before the Court of Principal Sessions Judge, Reasi.

2) As per the prosecution case, on 21.07.2022, respondent No.3, mother of the prosecutrix, lodged a report with Police Station, Reasi, alleging therein that his daughter, aged about 13 years, who is a student of 9th class, after coming back from her school at about 5.30 pm, narrated to her that on her way back, the petitioner, who was riding a motorcycle, stopped his motorcycle and offered lift to her. The daughter

of the complainant (hereinafter referred to as “the prosecutrix”) accepted the offer of the petitioner but while proceeding towards her village, the petitioner stopped the motorcycle near a jungle. He asked the prosecutrix to get down from the motorcycle and thereafter started obscene conversation with her. The petitioner is alleged to have dragged the prosecutrix inside the jungle, where he tried to commit rape upon her. The prosecutrix raised a hue and cry and somehow managed to get back to her home.

3) The complainant upon hearing the story from her daughter narrated the same to her father and both of them proceeded to the house of the petitioner. According to the complainant, at the relevant time, the petitioner was not in his house but his father told them that he would rebuke him and he also tendered apology on his behalf. While the complainant and her husband were coming back to their house, at about 7.00 pm, the petitioner along with another person launched an attack upon the complainant and her father. He also snatched a sum of Rs.3000/ from the pocket of her father and when they raised hue and cry, the petitioner fled away from the spot. On the basis of this report, the police registered FIR No.184/2022 for offences under Section 376, 511, 341, 323 and 382 of IPC and started investigation of the case.

4) During investigation of the case, it was found that the age of the prosecutrix at the relevant time was 13 years and her statement under Section 164 of the Cr. P. C was recorded before the Magistrate.

5) The prosecutrix in her statement made before the Magistrate has stated that on 21.07.2022 at about 4.00 pm, when she was proceeding to her home from her school, the petitioner came over there and offered to carry her on his motorcycle to her home. While proceeding to her home, the petitioner stopped his motorcycle near a jungle and started abusing her, whereafter he took her towards jungle. The petitioner touched her breasts and thereafter put her hand inside her shalwar and tried to open it but she resisted. The petitioner threatened her that in case she discloses the incident to anybody else, he would kill her. She raised a hue and cry, whereafter the petitioner left the spot. She went to her home and narrated the whole occurrence to her mother.

6) The petitioner has sought bail on the ground that the chargesheet against him has been laid before the learned trial court on 10.08.2022 but till date only one prosecution witness has been examined. It has been contended that the petitioner is in custody for the last about two and a half years and there is no prospects of conclusion of the trial in near future as 14 prosecution witnesses are yet to be examined in the case. It has been further contended that the statement of the prosecutrix has already been recorded and, as such, there is hardly any chance for the petitioner to tamper with the prosecution witnesses. Lastly, it has been submitted that the petitioner is ready to abide by any condition that may be imposed upon him by this Court while granting bail in his favour.

7) The respondent-State has filed its objections to the bail application, in which, besides narrating the prosecution story, it has been contended that the petitioner is involved in a heinous crime and there is every apprehension that he may influence the prosecution witnesses.

8) Respondent No.3, the complainant, has, upon her appearance before the Court, submitted that she is adopting the stand taken by the official respondents.

9) I have heard learned counsel for the parties and perused the material on record.

10) The legal position relating to grant of bail in heinous offences like murder or rape has been laid down by the Supreme Court in its catena of judgment, according to which the matters to be considered in such cases are:

- (i) Whether there is any prima facie or reasonable ground to believe that the accused has committed offence;*
- (ii) Nature and gravity of the charge;*
- (iii) Severity of punishment in the event of conviction;*
- (iv) Danger of the accused absconding or fleeing after release on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being tampered with; and*
- (viii) danger of justice being thwarted by grant of bail.*

11) Adverting to the facts of the present case, there is no doubt to the fact that there is enough material on record in the shape of statement of

the prosecutrix recorded under Section 164 of the Cr. P. C as also during the trial of the case to, prima facie, connect the petitioner to the alleged crime. It is also not in dispute that the charge which the petitioner is facing is grave in nature. So far as the maximum punishment for the charge for offence under Section 8 of POCSO Act, for which the petitioner is facing trial, is concerned, the same extends to five years of imprisonment of either description with a minimum punishment of three years of imprisonment along with fine. The petitioner has been in custody for the last about two and a half years. As per Section 436-A of Cr. P. C, if a person has, during the period of investigation, inquiry or trial, undergone detention for a period extending upto one half of the maximum period of punishment specified for that offence under that law, he has to be released by the Court on his personal bond with or without sureties. Although the petitioner has not spent one half of the maximum punishment specified for Section 8 of the POCSO Act as yet, but in another approximately one month's time, he is going to serve more than one half of the maximum punishment specified for offence under Section 8 of the POCSO Act. This factor has to be taken into account while considering the plea of bail made by the petitioner.

12) So far as the stage of trial is concerned, a perusal of the trial court record would show that charges against the petitioner have been framed on 07.10.2022 and till date only the statements of the prosecutrix and her mother have been recorded. A perusal of the minutes of the proceedings reveals that the case is being fixed by the trial court for

recording of evidence of the prosecution after almost every fifteen days but the prosecution has been unable to produce its witnesses, as a result of which only two prosecution witnesses have been examined for the last more than two years. It is a settled law that long incarceration of an accused without any significant progress in trial violates his fundamental right to life guaranteed under Article 21 of the Constitution. On this ground alone, the petitioner is entitled to grant of bail in the present case.

13) Apart from the above, statement of the prosecutrix has already been recorded and her mother has also been examined. Most of the witnesses who are yet to be examined happen to be either the police officials or the Government officials including the doctor. Therefore, even if the petitioner is enlarged on bail, there is no chance of his tampering with the prosecution witnesses at this stage because the material witnesses have already been examined by the trial court. Even otherwise, there is nothing on record to show that the petitioner is a habitual offender or that he has the potential of tampering with the prosecution witnesses. The petitioner, as per the material on record, is a young boy having no previous criminal antecedents.

14) For what has been discussed hereinabove, the application is allowed and the petitioner is admitted to bail subject to the following conditions:

- I. That he shall furnish personal bond in the amount of Rs.50,000/ with one surety of the like amount to the satisfaction of the learned trial court;*

- II. That he shall appear before the trial court on each and every date of hearing;*
- III. That he shall not intimidate or tamper with prosecution witnesses/evidence.*
- IV. That he shall not leave the territorial limits of Union Territory of J&K without prior permission of the learned trial court;*

15) The bail application shall stand **disposed** of.

(SANJAYDHAR)
JUDGE

Srinagar,
27.12.2024
“Bhat Altaf-Secy”

<i>Whether the order is speaking:</i>	<i>Yes/No</i>
<i>Whether the order is reportable:</i>	<i>Yes/No</i>