

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

Bail App No.20/2025
CrIM No.703/2025

Reserved on : 21.05.2025
Pronounced on:27.05.2025

Balwan Chand, aged 32 years
S/O Nand Lal R/o Bain, Tehsil
Chanani, District Udhampur.

.....Petitioner(s)

Through: Ms Zainab Shamas Watali, Advocate.

vs

..... Respondent(s)

1.UT of J&K through Station House Officer
Police Station Chenani, District Udhampur

2.Miss X (Victim)

Through: Mr. Sumeet Bhatia, Govt. Advocate.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner/accused through the medium of this petition seeks bail in the case titled 'U.T. of J&K Vs. Balwan Chand' pending trial before the Court of learned Principal Sessions Judge, Udhampur, arising out of FIR No.110/2021 registered at Police Station Chenani on 10.08.2021 for the commission of offences punishable under Sections 376-AB IPC and 4/6/12 POCSO Act.
2. Petitioner has asserted in his application that he had moved an application for grant of bail before the trial Court, which came to be dismissed vide order dated 31.10.2024; that the petitioner has been implicated in a false case due to enmity by the complainant; that the trial court rejected his bail application in a very casual manner without appreciating the material on

record, particularly the medical and forensic evidence; and that the petitioner has been suffering from Tuberculosis and has not been getting proper treatment due to his custody.

3. Pursuant to notice, respondent No.1 has filed objections to the bail application, whereas father of minor respondent No.2, despite service of notice did not respond to the notice.
4. It has been asserted by the investigating agency in its objections that the petitioner had seduced the victim, who was related to him as niece, showed her porn video from his mobile and was subsequently subjected to sexual assault repeatedly; that on the complaint of the father of the victim a case was registered vide FIR No.110/2021 at Police Station Chenani and after investigation of the case the charge-sheet was laid before the court and the accused was charge-sheeted for the commission of afore stated offences on 15.12.2021; that out of 23 prosecution witnesses, 16 witnesses have been examined by the prosecution; and that the bail application earlier filed by the petitioner before the trial court had been dismissed on 31.10.2024 and rightly so having regard to the nature of the offences.
5. Ms. Zainab Shamas Watali, learned counsel for the petitioner, argued that the petitioner has been suffering incarceration for more than 3 ½ years for none of his fault as he has been falsely implicated by the father of the victim due to some personal animosity between them; that the victim has been used by her father for false implication of the petitioner in alleged serious offences with a purpose that he may not be able to get released on bail.
6. Learned counsel for the petitioner further argued that as against the statements of the victim and her father before the police during

investigation that she was subjected to sexual intercourse by the petitioner on multiple occasion, the statements of the medical expert Dr. Sanjay Verma, who, during trial had clearly stated that during his examination of the victim no injury on her person including genitalia were found and that her Hymen was also found intact and it is not possible that the victim, who is of a tender age, will not receive any bruises or injuries on her private part and her Hymen remains intact even being subjected to sexual assault many a times; that the FSL report and the statement of the FSL expert also clearly stated and had ruled out that there was any seminal stains on the seized clothes of the prosecutrix, which is also an indication that there was no question of committing rape by the petitioner.

7. Ms. Watali has finally argued that in view of the long incarceration of the petitioner for over a period of 3 ½ years and the doubt created by the medical and forensic evidence to the prosecution story, animosity between the petitioner and father of the victim with regard to their dispute are the indicators that be considered for grant of bail in favour of the petitioner and to release him from custody and prayed for the same.
8. Mr. Sumeet Bhatia, learned Govt. Advocate, ex ad verso, argued that the petitioner has been facing heinous charge of subjecting a child to rape repeatedly after showing her porn material and given to the severity of punishment on conviction, do not entitle him to grant of bail. He further argued that the plea raised by learned counsel for the petitioner on medical and forensic ground is not relevant for the consideration of the bail as the same shall be considered while deciding the main case on its merits and the offence of rape is constituted even without penetration, there being no

substance in any other submission. It was finally prayed that the application be rejected.

9. Heard learned counsel for the parties, perused the record and considered the matter.
10. On the basis of a written complaint moved by one Jagdev Singh on 10.08.2021 at Police Station Chenani alleging that on 09.08.2021, his daughter Ms X (to hide her identity) was found visiting the shop in the locality for purchasing eatables on many occasions and on an enquiry made by the mother of his daughter, she disclosed that one Balwan Chand (petitioner herein) had given her Rs.50/- in their absence, who had come to their house and took her to their another abandoned house where rape was committed on her in their absence on 09.08.2021. The FIR was registered on 10.08.2021 and the petitioner was arrested on 11.08.2021.
11. After investigation of the case, the charge-sheet was laid before the trial court on 15.12.2021. On a perusal of the scanned record received from the trial court, it appears that almost all witnesses except Investigating Officer and one of the Forensic experts, have been examined. The complainant in his statement before the trial Court has stated that he had to pay an amount of Rs.6000/- for a period of six months for the lease of piece of land to the petitioner and the victim has stated that her father and the accused were in the business of selling vegetables at same place. PW Dr. Sanjay Verma, who had examined the victim as Gynaecologist, had stated that there was no visible injury marks on or around external genitalia or on her body and that the Hymen was intact; and that in view of his clinical examination and findings of the HPE examination of Vaginal smear, he was of the opinion

that there was no evidence of sexual intercourse. PW Shahul Ahmad Kanth had stated that he had found no seminal stains on the exhibits of the clothes of the victim, which had been forwarded to him by the investigating agency.

12. Petitioner has been accused of heinous and serious offences, which attract severe punishment on conviction. Almost all the witnesses except Investigating Officer and one of the forensic experts, seem to have been examined by the trial court as is borne out from the scanned record. Therefore, there is no question of apprehension of tampering with the prosecution evidence by the petitioner, in case he is admitted to bail.
13. Personal liberty is a cherished fundamental/constitutional right of all the citizens of this country. However, that is subject to certain legal conditions. Jurisprudence governing bail is primarily to ensure the presence of the accused to face the trial without influencing the prosecution evidence and denial of the bail cannot be justified by any means on account of pre conviction punishment which runs against the constitutional values.
14. Without commenting on the merits of the case, in view of the doubt created on the face of the statements of the medical and forensic experts and the long incarceration of the petitioner for over a period of 3 ½ years and the ailment of Tuberculosis, this Court is of the considered opinion that the petitioner is entitled to grant of bail at this stage. The application is, thus, granted and the petitioner is admitted to bail subject to the conditions to be imposed by the trial court. Observations made by this court in this order for the disposal of the application are entirely made for the disposal of this

application only and shall not construe anything on merits of the case so as to affect the trial.

15. Disposed of.

(M A Chowdhary)
Judge

Jammu
27.05.2025
Narinder

Whether the order is speaking: Yes
Whether the order is reportable: Yes

