

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

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Bail App No. 55/2025

Hardeep Singh

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

Through: Mr. Supreet R.S. Johal, Advocate.

vs

UT of J&K & Anr.

..... Respondent(s)

Through: Mr. Vivek Matto, Advocate vice
Mr. Vishal Bharti, Dy. AG.

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

27.09.2025

(Oral)

01. The applicant, in jail for the past 09 months, in consequence of trial for offences under Sections 376, 328, 384 IPC of Bharatiya Nyaya Sanhita, 2023 (for short "the BNS"), being aggrieved of order dated 27.02.2025, passed by learned Additional Sessions Judge, Samba ["the trial court"], vide which, his bail plea came to be declined, has approached this Court for liberty, predominantly on the ground of false implication and prolonged incarceration.

02. The plea has been opposed by the respondent-UT primarily on the ground of gravity of the charge.

03. As factual narration of the present case would unfurl, on 26.12.2024, the private respondent (hereinafter referred to as "the prosecutrix), lodged a written report alleging inter alia that on 19.04.2023, the applicant made a telephonic call and being a neighbourer expressed his desire to meet her. He made repeated calls thereafter. She called the

applicant in her house on 28.04.2023, when there was none else in the house and children were asleep. The applicant had brought a cold drink. Both of them had the cold drink and started talking with each other. She fell unconscious and when she became conscious, she found herself naked and the applicant lying by her side on the bed. The prosecutrix alleged that applicant had committed rape upon her and when she asked the applicant, he said that she was under the influence of intoxicant, and he too could not control his emotions. The prosecutrix goes on to allege that next day, the applicant called her, came to her house and showed her mobile video, which depicted the applicant having sex with her. Thereafter, applicant started blackmailing the prosecutrix to extort money. He told her that he wanted Rs. 50,000/-, otherwise he would send the intimate video to her husband. Hearing this, she got scared, withdrew Rs. 50,000/- from the ATM and gave it to him. After that, he had sex with her several times, made videos of the act and also took Rs. 10.00 lacs by blackmailing. When she ran out of money, the applicant started blackmailing her husband who was living abroad and demanded the Rs. 20,000/- by sending a QR code and when he did not send the money, he sent her naked videos. The applicant is also alleged to have committed theft in the house of the prosecutrix and stealing the ornaments and cash amount of Rs. 1,40,000/-.

04. On the receipt of this report, FIR No. 120/2024 for offence under Section 376 IPC came to be registered and investigation culminated in the presentation of charge-sheet against the applicant for offences under Sections 376/328/384 IPC.

05. Pertinently, the bail plea of the applicant came to be declined by the trial court before the presentation of the charge-sheet, when investigation of the case, according to the trial court, was at the crucial stage.

06. The applicant seeks his enlargement on bail primarily on the ground that from a bare perusal of the contents of the FIR and charge-sheet, it was evident that there was consensual relationship between him and the prosecutrix. According to the applicant, it was the prosecutrix who harassed and blackmailed him to marry her and on his refusal, implicated him in a false case. Another ground urged in the application is delay in the lodgment of FIR.

07. Having heard learned counsels for the parties, I have gone through the trial court record and statement of the prosecutrix recorded in the trial court.

08. The seriousness of the charge, no doubt is one of the relevant considerations while considering the bail pleas but that is not the only test or factor, because if it is reckoned as the sole test, it may amount to imbalancing the fundamental postulate of bail jurisdiction that accused is presumed to be innocent, until guilt is proven. The discretionary jurisdiction of Court in granting or refusing bail is regulated by settled principles of law and the facts and circumstances obtaining a case. The underlying considerations for the exercise of this discretion include the seriousness of the charge, potential impact on the investigation/trial, propensity of the accused to jump over bail, abscond and re-offend, the nature of accusations, the severity of punishment which conviction may entail and obligation of the

Court to balance the rights of the accused with the need to maintain public confidence in the justice delivery system.

09. A perusal of the trial court record reveals that applicant came to be charged by the trial court on 30.04.2025. There are total 19 witnesses cited in the charge-sheet and prosecution so far has managed to examine the prosecutrix only.

10. Though, a detailed critical examination of the evidence, recorded during the trial, is not permissible while considering a bail plea, to make sure that there is no prejudging of the matter, a brief examination however, can be undertaken by the Court to determine the existence or otherwise of a *prima facie* case. In heinous charges, bail can be granted if Court has reasons to believe that material on record verily points out the absence of grounds to believe that applicant is involved in the commission of the offence for which he stands charged.

11. The prosecutrix in her testimony in the trial court has stated that she had an affair with the applicant/accused since 19.04.2023. The FIR against the applicant came to be lodged on 26.12.2024. *Prima facie*, it appears from the written complaint and tone and tenor of the testimony of the prosecutrix that she has been in a consensual relationship with the applicant for more than one and a half years before the lodgment of the FIR. The testimony of the prosecutrix recorded during the trial is self-explanatory. Less said the better, lest it may prejudice the trial.

12. Hence, the present application is allowed and applicant is directed to be released on bail subject, however, to the following conditions that:-

- i) he shall furnish a surety bond in the amount of Rs. 1.00 lac to the satisfaction of the trial Court and a bond of personal recognizance of the like amount, to the satisfaction of Superintendent of the concerned jail;
- ii) he shall regularly appear before the trial court without fail;
- iii) he shall not jump over bail and directly or indirectly make an attempt to coerce or influence the prosecution witnesses or tamper with the prosecution evidence; and
- iv) he shall not leave the territorial jurisdiction of the trial court, without prior permission.

13. Before parting, however, it is made clear that nothing said in this order shall be construed as an expression of opinion on the merits of the case and learned trial court shall be at liberty to assess the evidence in entirety uninfluenced by any observation made in the order.

Jammu
27.09.2025
Abinash



(Rajesh Sekhri)
Judge