

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

Bail App No. 117/2025

*Reserved on: 19.11.2025
Pronounced on: 28.11.2025
Uploaded on: 28.11.2025*

*Whether the operative part or full judgment is
pronounced-**Full Judgment***

Aftar Ahmed & Anr.

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

Through: Mr. H. R. Qureshi, Advocate.

Vs

..... Respondent(s)

U.T of J&K & Anr.

Through: Mr. Eishaan Dadhichi, GA.
M/S H. A. Siddiqui & Shamas Ud Din Shaz,
Advocates

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

Bail App No. 117/2025

- 01.** Petitioners, namely, Aftar Ahmed and Zulafqar Ali, filed the instant bail application, alleging their false implication by respondent no.2-complainant, to seek pre-arrest/anticipatory bail in a case registered at Police Station Mendhar vide FIR No. 31/2025 on 27.03.2025, for commission of offences punishable under Sections 64, 49 and 87 of BNS, 2023.
- 02.** It is alleged in the impugned FIR that petitioner no.1, abducted the respondent no.2 with the aid of other accomplices mentioned in the FIR (supra), forcibly married her and committed rape, whereas, the case of the petitioners is that the respondent no.2, on her own sweet will, has solemnized marriage with petitioner no.1 with all rites and customs on

15.02.2025. A photocopy of the Nikkahnama is placed on record; that as a *volte face*, the respondent no.2, on being pressurized by her father, took a somersault, concocted a story, implicated the petitioners, shown herself as being victim of rape, abduction and marriage by force in order to wreak vengeance upon the petitioners, on the asking of her father.

- 03.** A perusal of FIR would show that on 15.02.2025, complainant along with her brother went to a hospital for a medical check-up in Mendhar, where accused Azmat Bibi met her, got herself acquainted with her and took the complainant to shopping in an Echo vehicle, allegedly intoxicated her by offering a soft drink supposedly laced with sedative like substances, after which she suffered dizziness, and the accused carried her to house of one-Mohd Ibrar at Gohlad; that several accused persons were present there, who coerced her to sign certain papers, and informed her that she stood married to accused-Iftar Ahmed; that, thereafter, accused Iftar Ahmed forcibly took her to another room, removed her clothes against her wishes and sexually assaulted her, video-graphed the whole act, and threatened her of dire consequences that they would viral her video of sexual assault and also they would kill her, in case she narrates the incident to anybody; that apprehending danger to her life and dignity, she remained mute for almost 40 days, and finally told her ordeal to her parents; that based on her written complaint, FIR No. 31/2025 was registered at Police Station Mendhar for the commission of offences punishable under Sections 64, 49 and 87 BNS against the petitioners.
- 04.** Fearing threat of impending arrest, the petitioners approached this court seeking grant of pre-arrest bail/anticipatory bail. A Co-ordinate Bench of

this court, vide order dated 29.04.2025, while issuing notice to respondent no.2, admitted the applicants to interim bail subject to the furnishing of surety and personal bonds to the satisfaction of the SHO concerned to the tune of Rs.50,000/- each for the fulfilment of the following conditions:

- (i) they shall not make any inducement, threat or undue influence to the persons acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Police or the Court;
- (ii) they shall not repeat any kind of crime; and
- (iii) they shall appear before the Investigating Officer of the case as and when required.

05. Alongside bail application, applicants also moved this Court by filing CRM(M) No.360/2025, wherein, a direction was issued to the SHO, Police Station Medhar on 29.04.2025 to go on and conclude the investigation of the case but production of final report/challan was made permissible only with the previous permission of this Court. Vide order dated 11.08.2025, the court modified the order dated 29.04.2025 (supra) by providing that all the petitioners shall appear before the investigating officer from 10 am to 5 pm regularly and cooperate with the investigating agency. And, the respondent no.1 was asked to file the updated status by or before the next date of hearing.

06. Status report has since been filed by the respondent no.1 in terms of the order dated 11.08.2025, a perusal whereof would show that SHO Police Station Mendhar has reported that the petitioners were found involved in case FIR No. 31/2025 U/Ss 64/49 BNS, and both the accused were present before the investigation officer during course of investigation.

Apparently, order dated 11.08.2025 stands complied with by the petitioners.

07. Heard and considered.
08. On perusal of the objections filed by the Investigating Agency, it has been found that the petitioners have been alleged to have committed offences punishable under Sections 64 (rape), 87 (Kidnapping) and 49 (Abetment) of BNS and for offence U/S 64 is punishable with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life and fine, whereas for offences U/Ss 87 and 49, the punishment is imprisonment which may extend to 10 years and fine.
09. Hon'ble the Supreme Court, in a catena of judgments, has laid down principles for consideration for grant of anticipatory bail and how to exercise the power while granting bail. In **Bhadresh Bipinbhai Sheth Vs. State of Gujarat & Anr, reported as 2016(1) SCC(Crl) 240**, relied by learned counsel for the petitioners, the Court while granting anticipatory bail for offence under Section 376 IPC has held:

“Before we proceed further, we would like to discuss the law relating to grant of anticipatory bail as has been developed through judicial interpretative process. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case of Gurbaksh Singh Sibbia and Others v. State of Punjab [1980 2 SCC 565]. The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in Section 438 of the Code is conceptualized under Article 21 of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of Section 438 of the Code in light of Article 21 of the

Constitution. The Code explains that an anticipatory bail is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under Section 438 is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by Section 46 of the Code."

10. The Hon^{ble} Apex Court in case titled as "**Ajwar Vs. Waseem & Anr**" connected with other cases reported as **2024 (6) Scale 461** in paragraph 26 held as under:

"26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, to role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and overall desirability of releasing the accused on bail."

11. The respondents have not pointed contravention of any of the conditions of the interim bail by the petitioners herein. Since the investigation of the

case is almost complete, it will be in the interest of justice that the petitioners are admitted to bail.

- 12.** Having regard to the decisions rendered by Hon'ble Supreme Court in the cases referred above, the allegations and objections filed by the Investigating Agency and considering the nature of the offences with which the petitioners have been charged and also viewing that bail is the rule and jail is the exception, this Court is of the considered opinion that the petitioners are entitled to be admitted to bail, particularly so when there are allegations and counter allegations which require full blown trial. It will be in the interest of justice if the interim bail granted to the petitioners be made absolute.
- 13.** In the aforesaid backdrop of the matter, the law discussed above and in view of the facts and circumstances of the case in hand, the bail application is allowed and the interim bail granted to the petitioners/applicants vide order dated 29.04.2025 is made absolute subject to all the conditions therein.
- 14.** The bail application is, '*disposed of*' along with connected application(s).

(M A CHOWDHARY)
JUDGE

Jammu
28.11.2025
Raj Kumar