

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No. B.A No. 152/2025
CrIM No. 903/2025
c/w
CRM(M) No. 319/2025
CrIM No. 624/2025

Reserved on: - 17.10.2025
Pronounced on: -18.10.2025
Uploaded on: - 18.10.2025

Whether the operative part or full
judgment is pronounced:-Full

**Fareed Ahmed, Age 44 years, S/o Lal Hussain,
R/o Rakh Barotian near AIIMS, Tehsil Vijaypur,
District Samba.**

....Petitioner(s)

Through:- Mr.Rohit Sharma, Advocate.

V/s

**1. UT of J&K Th.
Senior Superintendent of Police, Samba.**

.....Respondent(s)

**2. Station House Officer (SHO), Police Station,
Vijaypur District Samba.**

Through:- Mr. Vishal Bharti, Dy. AG with
Mr. Vivek Matoo, Advocate.

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

ORDER

1. By this composite order, the two connected petitions arising out of FIR No. 08/2021 and the consequent charge-sheet filed for offences under Sections **323, 376-D, 366, 212, 506, and 120-B IPC**, pending before the Court of Sessions Judge, Samba as Challan No. 14/2021, are taken up together for consideration and disposal.

2. Briefly stated, the prosecution's case is that on 12.01.2021, the prosecutrix alleged that certain unknown persons forcibly put her into a vehicle, took her to a secluded place, and subjected her to gang rape. During the investigation, five persons were identified as the alleged perpetrators. Four of them were arrested and duly identified by the prosecutrix; however, the fifth accused remained at large.
3. It is further alleged that two of the arrested accused, namely Mohd. Anwar and Showkat Ali, during interrogation, disclosed that after committing the offence, they had been provided shelter by the present petitioner. Consequently, the petitioner was arrested and charge-sheeted under Sections **323, 376-D, 366, 212, 506, and 120-B IPC.**
4. The order framing charge has been challenged in CRM(M) No. 319/2025 on the ground that the petitioner had no role in the commission of the offence of gang rape and that, as per the charge-sheet itself, the only allegation against him is of harbouring the co-accused after the commission of the crime, thereby attracting at best Section 212 IPC.
5. Learned counsel for the petitioner submitted that the offence of gang rape under Section 376-D IPC embodies the principle of joint liability, which presupposes prior concert and a meeting of minds. In the present case, the petitioner's alleged act occurred after the commission of the offence, when the co-accused purportedly took refuge in his house. There is, therefore, no material to suggest any

prior concert, meeting of minds, or participation by the petitioner in the commission of the offence. Even the charge-sheet concludes by holding the petitioner guilty only of harbouring under Section 212 IPC, and hence he cannot be roped in with the aid of Section 120-B IPC.

6. ***Per contra***, learned counsel for the respondent-State contended that although the petitioner did not participate in the actual commission of the offence, he had knowledge of the co-accused's intentions and, in furtherance of a common design, sheltered them. Therefore, the trial court rightly framed charges against him under Section 120-B IPC, read with other offences.

7. **Heard learned counsel for both sides and perused the record.**

The charge framed against the petitioner reads as follows:-

“That on 17.01.2021, you, along with other persons, in furtherance of a conspiracy, jointly dragged the victim and committed rape upon her without her consent. Knowing that you and the other accused have committed the said heinous act, you have thereby become an executor of the offence punishable under Sections 323, 376-D, 366, 212, 506, and 120-B IPC.”

8. From a plain reading of the chargesheet and the record, it is evident that the petitioner neither met the co-accused before the commission of the offence nor was present at the time of the occurrence. The prosecutrix has neither named nor identified the petitioner as one of the persons involved in the act. No material, documentary or oral, has been collected during the investigation to

suggest that the petitioner aided, abetted, or conspired with the co-accused in committing the offence.

9. The legal position governing such circumstances is well settled. In “**Ashok Kumar v. State of Haryana**, reported in (2003) 2 SCC143”, the Hon’ble Supreme Court held that Section 120-B IPC contemplates a bare agreement to commit an offence and that mere association or knowledge of the offence or its perpetrators does not constitute conspiracy. It was further held as under,

Charge against the appellant is under Section 376(2)(g) IPC. In order to establish an offence under Section 376(2)(g) IPC, read with Explanation I thereto, the prosecution must adduce evidence to indicate that more than one accused had acted in concert and in such an event, if rape had been committed by even one, all the accused will be guilty irrespective of the fact that she had been raped by one or more of them and it is not necessary for the prosecution to adduce evidence of a completed act of rape by each one of the accused. In other words, this provision embodies a principle of joint liability and the essence of that liability is the existence of common intention; that common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of action and it could arise and be formed suddenly; but there must be meeting of minds. It is not enough to have the same intention independently of each of the offender. In such cases, there must be criminal sharing marking out a certain measure of jointness in the commission of offence.”

10. Similarly, in “**State v. Nalini, AIR 1999 SC 2640**”, it was held that mere knowledge of a conspiracy or association with conspirators, without an agreement to commit the offence, cannot render a person guilty of conspiracy.
11. Applying the above principles, it is manifest that neither the charge-sheet nor the statements recorded during investigation disclose any evidence of prior acquaintance or agreement between the petitioner and the co-accused, or any participation in planning or executing the crime. The record merely suggests that after the occurrence, the

co-accused may have taken shelter in the petitioner's house conduct which, at best, could attract Section 212 IPC (harbouring offender). The offence under Section 212 IPC presupposes:-

- (i) commission of an offence by another person,
- (ii) harbouring or concealing such person, and
- (iii) intention of screening him from legal punishment.

12. Even so, such harbouring becomes culpable only if the person had knowledge or reason to believe that the person harboured was an offender. Mere shelter, in ignorance of the crime, does not attract criminal liability.

13. Thus, the trial court, while framing charge on 10.03.2025, has travelled beyond the material collected during investigation. The petitioner's alleged conduct, as per the charge-sheet itself, is confined to harbouring the accused persons after the commission of the crime; the victim has not attributed any overt act or complicity to him in the act of gang rape. Even otherwise also, having regard to the ingredients of Section 376-D of the IPC and Section 212 of the IPC, from plain expression, it is implicit therein that there is actual participation of two or more accused forming the gang with common intention to commit rape. There every member of the group would be deemed to be partner in crime even if any one of them had not actually taken part in the act of sexual assault, whereas harbouring, on the other hand, is a singular act, which follows only after a particular offence has been committed by the offender. So much so, until the offender is pronounced guilty, the act of harbouring cannot be stated to have been completed. The

trial Court in terms of order dated 10.03.2025, therefore, landed in error in drawing charge against the petitioner for offence under Sections **323, 376-D, 366, 212, 506, and 120-B IPC**, that too, when the charge-sheet did not disclose commission of the said offences by the petitioner. Hence by accepting CRM(M) No. 319/2025, the order of drawing charge against the petitioner is quashed. Petitioner is, *prima-facie*, found to have committed offence under Section 212 IPC, for which, he is to be put to trial.

14. Having regard to the charge so altered, the same invites maximum punishment of five years, whereas the petitioner is stated to be in custody since 23.01.2024 and his continuous detention is of no use for the prosecution. Even otherwise also, given the provisions enshrined in Section 480 BNSS 2023, a person accused of committing the offences carrying punishment for seven years, is not to be detained in custody merely because he is an accused of commission of such offence.
15. In that view of the matter, the instant bail application is allowed. The petitioner is directed to be released on bail, subject to furnishing surety in the sum of **₹1,00,000/- (Rupees One Lakh only)** and **personal bond of the like amount**, to the satisfaction of the learned trial Court. The trial Court shall be at liberty to impose such additional conditions, as may be necessary to ensure the petitioner's presence during trial and to prevent any misuse of the concession of bail.

16. Both petitions alongwith all connected miscellaneous applications, stand ***disposed of*** accordingly.
17. Let a copy of this order be transmitted to the learned trial Court for compliance.

(Sanjay Parihar)
Judge

JAMMU
18.10.2025
Ram Krishan

