

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No. B.A No. 189/2025
CrlM No. 1194/2025

Reserved on: - 14.10.2025
Pronounced on: - 17.10.2025
Uploaded on: - 17.10.2025

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

Arshad Ahmed, Age 28 years, S/o Bashir Ahmed, R/o Village Bagan Kote, Tehsil Chassana, District Reasi. Petitioner/Applicant(s)

A/p District Jail Udhampur Th. his father, namely, Bashir Ahmed, Age 45 years, S/o Abdul Wahad, R/o Village Bagan Kote, Tehsil Chassana, District Reasi.

Through:- Mr. Arshad Hussain, Advocate.

V/s

- 1. UT of J&K Th. SHO Police Station, Mahore, District Reasi.** Respondent(s)
- 2. Y Minor Th. his father Mohd. Yousuf, R/o Shibras, Tehsil Mahore, District Reasi.**

Through:- Mr. Sumeet Bhatia, GA.

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

ORDER

1. Background and Case Details

- 1.1 The petitioner has invoked jurisdiction of this Court seeking enlargement on bail in case FIR No. 32/2022 registered at Police Station, Mahore for offences under Sections 366, 376 and 109 of the IPC read with Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

- 1.2 The petitioner's grievance is that the police have lodged a false and frivolous case against him and his family members, all of whom are innocent and have been falsely implicated. The alleged occurrence dates back to 22.04.2022, when the prosecutrix had, of her own volition, gone to the house of one Mohd. Hanief, who, as per the petitioner, even attempted to convince her parents that she was unwilling to marry according to their wishes.
- 1.3 It is further stated that the prosecutrix, through the said Mohd. Hanief had approached this Court by way of WP(C) No. 966/2022, seeking directions to the police to provide her protection from her parents, who were attempting to solemnise her marriage against her will. This Court had directed the police to ensure that her marriage was not solemnised against her wishes.
- 1.4 Subsequently, the father of the prosecutrix filed WP(Crl) No. 13/2022 seeking custody of the minor girl. In compliance thereof, the prosecutrix appeared before the Court and stated that she was residing with Mohd. Hanief out of her own consent and will. She was thereafter sent to Nari Niketan, and later, in terms of an order dated 25.05.2022, handed over to her father. The father of the prosecutrix then procured her statement under Section 164 Cr.P.C, in which the petitioner was allegedly implicated for rape. However, the medical opinion obtained during the investigation revealed no evidence of sexual intercourse. The petitioner was arrested on 25.05.2022 and has remained in custody since then. Out of eleven witnesses, several, including the prosecutrix, have already been examined, and in her

testimony, she has stated that, Mohd. Hanief was also falsely implicated by her father.

- 1.5 This Court has already granted Hanief and the father of the petitioner bail, whereas the petitioner, being the only son of his parents, continues to languish in custody without any legal basis. The trial Court has dismissed his bail plea on 24.06.2025, primarily observing that the offence alleged is heinous in nature and the petition is premature.

2. Prosecution Version

- 2.1 As per the prosecution, the father of the victim lodged a written complaint on 22.04.2022, alleging abduction of his daughter by the petitioner and co-accused. The victim was recovered on 20.05.2022 from Janipur, Jammu and sent to Nari Niketan. She was later handed over to her parents after expressing a willingness to reside with them.
- 2.2 Upon completion of the investigation, offences under Sections 366, 376 & 109 IPC read with Sections 3/4 of the POCSO Act were stated to have been established against the petitioner, his father, Bashir Ahmed, and Mohd. Hanief. The latter two were granted bail by a Co-ordinate Bench of this Court on 24.05.2022, while the petitioner remains in custody. Charges were framed on 10.08.2022, and several witnesses have been examined in the ongoing trial.

3. Submissions on Behalf of the Petitioner

- 3.1 Ld. counsel for the petitioner contends that the victim was not a minor, as no conclusive evidence regarding her age has been brought

on record by the prosecution. The non-invocation of Section 363 IPC against the petitioner substantiates that the prosecutrix was a major and had voluntarily accompanied the petitioner.

3.2 The victim's own statements before this Court in the earlier writ proceedings negate any allegation of kidnapping or abduction. The Lamberdar (village head), cited as a prosecution witness, has also testified that the victim came voluntarily to the house of Mohd. Hanief expressed her desire to marry the petitioner. It is further argued that PW-5, Challan Singh, made a telephonic call to the father of the prosecutrix, who allegedly demanded a sum of ₹ 10 Lacs. from the petitioner's family to "settle the matter."

3.3 Ld. counsel submits that the entire prosecution case is fabricated, unsupported by medical evidence, and devoid of legal foundation. The maximum punishment under Section 376 IPC does not attract the bar under BNSS 2023, and since the victim was a major, Sections 3/4 POCSO are inapplicable. Most material witnesses have already been examined, and no purpose will be served by keeping the petitioner incarcerated.

4. Submissions on Behalf of the Respondents

4.1 Ld. counsel for the respondents has opposed the bail plea, submitting that the statement of the prosecutrix recorded under Section 164 Cr.P.C implicates the petitioner and has been reiterated in her deposition before the trial Court.

4.2 It is argued that the petitioner, in connivance with the co-accused, abducted the minor girl and subjected her to forcible sexual

intercourse. She was allegedly kept in a jungle for 4–5 days, during which the petitioner repeatedly violated her privacy. Given that the victim was a minor, Sections 3/4 of the POCSO Act stand established.

- 4.3 The trial Court, after due consideration of the facts and law, rightly dismissed the bail plea, holding that the petitioner failed to establish a prima facie case for release.

5. Rebuttal Submissions

6. In rebuttal, the counsel for the petitioner argued that the presumption under the POCSO Act is rebuttable and that the surrounding circumstances, particularly the victim's prior statements before this Court, demonstrate that the allegations were made under parental pressure. Once the victim was taken back into parental custody, the father orchestrated a false implication of the petitioner. It is therefore urged that the prosecution's case lacks credibility, and the petitioner's continued incarceration amounts to pre-trial punishment.
7. I have heard learned counsel for the parties and perused the material available on record.
8. Before advertng to the merits of the case, it is necessary to notice the admitted factual background that has emerged during the proceedings.
9. It appears that the father of the prosecutrix, in the initial complaint, had alleged that the present petitioner, along with five others, had abducted his daughter and that the prosecutrix had also stolen a sum

of ₹50,000 from his house. On that basis, FIR No. 30/2022 came to be registered under Sections 363/109 IPC on 22.04.2022.

10. Meanwhile, the prosecutrix filed a petition before this Court, being WP (C) No. 966/2022, alleging that her father was forcibly attempting to solemnise her marriage against her wishes and that she apprehended harassment at his hands. The said writ petition was disposed of on 05.05.2022 with directions that her grievances be looked into and that no harassment shall be caused to her.
11. Thereafter, the father of the prosecutrix filed WP (Cr.) No. 13/2022 alleging that the prosecutrix was under illegal confinement. Pursuant to the said petition, the victim was produced before this Court on 20.05.2022, where she stated in open court that she was residing with one Mohd. Hanief went out of her own free will. However, since it was brought to the notice of the Court that she was a minor, she was directed to be kept in Nari Niketan and produced again on 25.05.2022. On that date, she expressed her willingness to reside with her father, and accordingly, she was handed over to him.
12. Subsequently, on 25.05.2022, she made a statement under Section 164 Cr.P.C., implicating the present petitioner in the offences of abduction and rape, and also naming the petitioner's father and the said Mohd. Hanief as abettors.
13. During the trial, the prosecution has so far examined the prosecutrix, her father (the complainant), PW Sams Din, PW Abdul Rashid, and PW Charan Singh. The petitioner has been in custody

since 03.06.2022 and stands charged under Sections 366 and 376 IPC and Section 4 of the POCSO Act, offences which are grave and heinous in nature.

14. Section 376 IPC prescribes a punishment of not less than ten years, which may extend to imprisonment for life. A similar punishment is provided under Section 4 of the POCSO Act. In 1973 *JKLR 74*, it was observed that in cases where the law prescribes life imprisonment or an alternative lesser term, the object of such legislative design is to enable the court to exercise discretion depending upon the circumstances. However, even in such cases, bail may be declined if public or State interest so demands. This position was reiterated by this Court in 1987 *KLJ 237*.
15. It is also well settled that though Section 29 of the POCSO Act raises a presumption of culpability against the accused, the same is not absolute and remains rebuttable. The prosecution must first establish the foundational facts before such a presumption can be invoked, as it merely provides an additional evidentiary advantage to the prosecution. Thereafter, the burden shifts to the accused to rebut the presumption by establishing his innocence.
16. However, it is equally trite that the petitioner continues to be an *accused* and not a *convict*; and the cardinal principle of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be overlooked, however stringent the penal provisions may be.

17. The petitioner has been in custody for more than three years, and the prosecution has yet to conclude its evidence. The record reveals that before the alleged abduction, the prosecutrix was accused of having stolen ₹50,000 from her home and that she later accompanied the petitioner and co-accused. She has also stated that she travelled by bus to Jammu with co-accused Mohd. Hanief, a relative, and that she did not raise any alarm despite passing through several public places and police checkpoints a circumstance which renders the theory of abduction doubtful.
18. Moreover, the medical examination conducted on 20.05.2022 found no evidence of sexual intercourse. Although the age of the prosecutrix is stated to be below 18 years, hence making her consent immaterial in the eyes of law. But the overall circumstances suggest the possibility of an elopement, particularly as she had earlier expressed before this Court her desire not to reside with her father and had stated that she was staying with Mohd. Hanief of her own volition.
19. While it is true that offences under the POCSO Act are serious and the wrongdoer must be punished, at the stage of bail, the Court must confine itself to whether a *prima facie* case exists and whether further incarceration of the petitioner is warranted or not. Here, the prosecutrix appears to be a consenting party, though having regard to her age, as has been shown in the charge-sheet as more than 17 years, but less than 18 years and taking the law on the subject, though her consent is immaterial, however, it cannot be denied that

she was capable to understand all the consequences post her elopement, if any, with the petitioner. *Prima-facie*, there also appears to be the probability that the prosecutrix wanted to marry the petitioner, which was not to the choice of her father. That is why, in the petition filed before this Court, she had sought protection from her father. Till she remained out of the care of her father, nowhere she came forward with the allegation of abduction or rape. It is only after she went with her father that the whole case was prepared against the petitioner, his father and co-accused, namely, Mohd. Hanief with whom the petitioner had travelled from Mahore to Jammu to file the petition.

20. A bare reading of the complaint and the material available on record, it appears that the prosecutrix had left her family and the petitioner had escorted her. This was purely the case of elopement of two people, who appear to be in some relationship, where unfortunately the victim is a minor girl. In that background, the petitioner does not deserve to be kept in continuous incarceration pending culmination of trial, that otherwise also is of no use of the prosecution. So taking the merits of the case as it is, this Court finds that the petitioner has been able to carve out a strong prima-facie case for his enlargement on bail. Accordingly, he is directed to be released from custody, subject to furnishing personal bond for an amount of ₹1,00,000/- (Rupees One Lac) with two sureties of the like sum, with further conditions, as may be laid by the trial Court, so as to ensure speedy trial in case of the petitioner.

21. Needless to mention here that the observations made, if any, are only for the purpose of adjudication of this bail application and shall not be construed as merits of the case. As such, the bail application is allowed.
22. ***Disposed of***, alongwith connected applications, if any.
23. Copy of this order shall be notified to the trial Court for taking sequential steps and compliance.

(Sanjay Parihar)
Judge

JAMMU
17.10.2025
Ram Krishan

