

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Bail App No. 434/2022
c/w
CRM(M) No. 1062/2022

Prabjoot Singh & ors.

.... Petitioner/Appellant(s)

Through:- Mr. Arshad Majid Malik, Advocate

V/s

SHO Police Station Rajouri

.....Respondent(s)

Through:- Mr. Bhanu Jasrotia, GA for R1&2
Mr. Rupinder Singh, Advocate for
R3&4

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

ORDER

01. The applicants have filed this application for grant of bail in FIR No. 0602 dated 15.11.2022 for the offences punishable under Sections 366 and 109 IPC registered with Police Station Rajouri.

02. The contention of the petitioners is that petitioner No. 1 and Shivani Sharma having love affair with each other, had requested their respective parents for solemnization of their marriage. The parents of petitioner No. 1 were agreed but the parents of Shivani Sharma were annoyed with the idea. Petitioner No. 1 and Shivani Sharma executed a marriage agreement on 09.11.2022 which was duly attested by the Notary Public Rajouri on the same day. They have stated that they would maintain their marital obligation under the Sikh religion. After execution of the marriage agreement, they have performed Anand Karaj on 11.11.2022 in

presence of Sahib Shri Guru Granth Sahib and all the religious ceremonies were performed by President Gurudwara Mehar Nagrota, Rajouri.

03. It is submitted that after solemnization of marriage, both have travelled together firstly on 14.11.2022 to Delhi and subsequently to Goa and they came back to Rajouri on 19.11.2022. Thereafter it came to the knowledge of petitioner No. 1 that a false and frivolous FIR had been filed by the respondent. The petitioners, thus, submit that petitioner No. 1 had married Shivani Sharma out of their own free will.

04. The respondents have vehemently opposed the bail application stating that the petitioner No. 1 had fraudulently got some blank papers signed from her and drafted the marriage agreement thereon. Thereafter, they have also threatened her and made her sniffed something, due to which she was unconscious and when she regained consciousness, she saw that she was near the Bus Stand Rajouri. She did not perform any Anand Karaj, as such, they are not entitled to bail.

05. As per the prosecution story, FIR No. 0602/2022 was registered with Police Station Rajouri on 15.11.2022 on the basis of complaint made by Parveen Kumar S/o Sh. Kheem Raj against the petitioner Nos. 1 to 3 and one unknown person. It was alleged that on 14.11.2022, the daughter of the complainant went to University as a daily routine and her phone was switched off. While the complainant enquired why her phone was switched off and at the same time, petitioner No. 2 called and asked about his daughter and also narrated that fact that his son/petitioner No. 1's phone was also switched off. The complainant alleged that all four accused persons kidnapped and abducted his daughter and hidden her in unknown

place. During the course of investigation, Investigating Officer conducted spot inspection and prepared siteplan and recovered the victim-girl from Green Belt Park. The victim-girl refused to conduct her medical examination. The complainant and victim-girl were asked to record their statements but they refused to do so.

06. Heard learned counsel for the parties.

07. This Court while considering the matter on 20.12.2022 granted bail in anticipation of arrest to the petitioners. They have placed on record the marriage agreement executed between petitioner No. 1 and Shivani Sharma-respondent No. 4 and photographs envisage their marriage and also the air tickets from Jammu to Delhi and Delhi to Goa. It is unlikely that during the entire travel, the daughter of the complainant was unable to call attention to point out that she has been taken against her will. The petitioners have already been granted interim bail on 20.12.2022 and there is no objection raised by the respondents to the fact that the petitioners are not participating in the interrogation or misleading the same.

08. The Hon'ble Apex Court in '**Gurbaksh Singh Sibbia vs. State of Punjab**', (1980) SCC (Cri) 465, laid down the following parameters for grant of bail:

"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single

circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.”

09. Similarly, in ‘**Sanjay Chandra vs. CBI**’, (2012) 1 SCC 40, the Hon’ble Supreme Court reiterated the principles governing the grant of bail in the following terms:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”

10. In view of the aforementioned facts and circumstances and keeping in view the fact that the marriage agreement and air tickets as well as photographs are on record, a case for indulgence is made out.

11. Accordingly, the interim bail granted on 20.12.2022 is made absolute, subject to the following conditions:

I. That the applicants shall furnish personal bonds to the tune of Rs. 50,000/- each and one surety of the like amount before the Investigating Officer.

II. That the applicants shall cooperate with the investigation and shall appear before the Investigating Officer, as and when required;

III. That the applicants shall not influence the prosecution witnesses or the course of investigation in any manner;

IV. That the applicants shall not leave the territorial limits of Union Territory of J&K without the permission of the Investigating Officer.”

12. The bail application shall stand **disposed of**.

CRM(M) No. 1062/2022

List the matter on 20.05.2025.

(SINDHU SHARMA)
Judge

JAMMU
01.01.2025
RAM MURTI