

Serial No. 15
Reg. Cause List

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

Bail App 47/2025

SHAHID MUSHTAQ LONE

... Petitioner(s)

Through: Mr. Aqib Aijaz, Advocate

Vs.

UNION TERRITORY THROUGH POLICE
STATION SAFAPORA

...Respondent(s)

Through: Mr. Waseem Gul, GA

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
14.10.2025

1. Petitioner in the instant petition filed under section 439 BNSS is seeking bail in FIR No. 10/2024 registered with Police Station Safapora for the commission of offences under section 363, 376, 506 RPC read with Section 3/49 POCSO Act, 2012 and Section 207, 3/181 of Motor Vehicles Act, 1988 having culminated into filing of a charge sheet pending trial before the Court of Principal & Sessions Judge, Ganderbal being titled as "*State Vs. Shahid Mushtaq Lone & ors*".
2. The case set up by the prosecution, as it appears from the record available on the file, is that a complaint came to be submitted by One Mohammad

Shaif Ganai of Kurhamad Ganderbal before the Police Station, Safapora, stating therein in the said complaint that his daughter namely “X” age 16 years had gone to Mansabal Park from Kurhama on 10.04.2024 (Eid Day) for picnic purposes but did not return back home till late night, whereupon FIR bearing No. 10/2024 came to be registered for commission of offence under Section 363 IPC and investigation came to be set into motion, and during the course of investigation the statement of various witnesses came to be recorded and the search of the missing girl was undertaken and it got revealed during the course of investigation that the said girl was seen in the Mansbal Park and that on 12.04.2024, the complainant informed the Police Station that his daughter has been found around Dumping Park (Kooda Park) near Wayil Bridge, Ganderbal whereupon the missing girl was found and brought to the Police Station Safapora, whereafter the girl was sent to the Hospital at Ganderbal and was got medically examined and in the meantime, the Child Welfare Committee and JJP was also informed on phone for ascertaining the age of the girl and in the Aadhar Card the age of the girl was mentioned as 18 years, whereafter the girl was handed over to her parents.

It is further case of the prosecution that during the course of investigation the Date of Birth certificate of girl was obtained from the school she has been studying and as per the said certificate the age of the

girl was found less than 18 years being a minor, as such, offence under section 3 /4 of the POCSO Act, 2012 came to be added in the FIR.

It is the case of the prosecution that the girl had divulged to her mother that on the day of Eid in the evening one boy namely Shahid of Kangan along with another boy forced her to sit in a Maruti Car wherein few other boys were sitting who came to be deboarded by the said Shahid from the car at Wayil Bridge and he later took the girl to a hotel at Sumbal where he raped her, whereafter the girl was taken along with her father and lady police to Sumbal for identification of the Hotel, wherein from the owner of the hotel, phone number of the boy was obtained, whereafter it got revealed that the name of the boy is Shahid Mushtaq Lone S/o Mushtaq Ahmad Lone R/o Akhal Kangan and that during the course of further investigation the statement of the girl was got recorded and the owner of the hotel of Sumbal was also investigated who during the course of interrogation stated that there is no arrangements of staying in the hotel for the night and that upon further investigation the call details of the boy namely Shahid Mushtaq Lone were obtained and it got revealed that on the date of occurrence and the girl were in Srinagar and that in the meantime, the girl was got counselled by the Child Welfare Committee, Ganderbal and her statement also was got recorded under section 164 Cr PC, before the competent court at Ganderbal and that

during the course of further investigation the Shahid Mushtaq Lone and other four boys were summoned in the Police Station and were put to the test identification parade in the Tehsil Office Lar, Ganderbal in presence of Executive Magistrate, Lady Police and the victim girl who identified the said Shahid Mushtaq Lone and that consequently upon concluding of the investigation the accused Shahid Mushtaq Lone was found to have committed the offences and was, as such , arrested and besides that, the statement of the mother of the victim was also got recorded under Section 164 Cr PC, who endorsed the commission of offence by the accused Shahid Mushtaq Lone against the girl and consequently an offence under section 506 IPC was also added in the FIR and that on account of the use of the vehicle maruti car, in the commission of the offence of rape offences under relevant provisions of the Motor Vehicles Ac, 1988 were also added in the FIR and consequently upon completion of the investigation chargesheet came to be filed before the court.

3. The petitioner herein while seeking bail in the instant petition has stated that he had filed a bail application earlier before the Court of Principal Sessions Judge, Ganderbal on 10.02.2025, which however, came to be dismissed on 20.02.2025, and that the said bail application had been dismissed without taking into consideration all relevant facts and the statement of witnesses and material on record and that the said court also

overlooked the fact that the FIR had been belatedly got registered on 12.04.2024 after the alleged date of occurrence 10.04.2024, and that the petitioner herein is a student and is no way connected with the offences covered in the FIR/charge sheet and has no criminal antecedents and that the accused/petitioner is a responsible law abiding person and deserves to be enlarged on bail subject to any conditions those may be put in the order of the bail.

4. **Objections** to the petition have been filed by the respondents, wherein the same is being opposed on the premise that the accused/petitioner is involved in a grave and heinous offence, and, is as such not entitled to the concession of bail and that there has been no change in the circumstances between the date of rejection of the earlier bail application by the court below till the filing of the present petition, as such, the petitioner is not entitled to concession of bail and that the accused/ petitioner has subjected the minor victim as per the medical report to the offence of rape which ground alone warrants dismissal of the petition, and, that the accused petitioner has caused stigma upon the character of the victim and has pushed her into trauma and agony owing to the commission of rape upon her, and that the petitioner otherwise also is not entitled to concession of bail in view of section 29 of the POCSO Act, 2012 qua which offence charges stand framed against the petitioner by the trial court. It is lastly stated in the objections that granting of bail to the

accused/petitioner in the grave and heinous offence, the petitioner is charged with at this stage would shake the confidence of public in criminal justice system.

Heard learned counsel for the parties and perused the record.

5. Before proceeding to advert to the pleas urged by the petitioner in the instant petition for seeking bail, it would be appropriate to refer to the position and principles of law hereunder qua the concept of bail and matters allied thereto laid down by the Apex Court from time to time in various judgments including in case titled as **“Neeru Yadav Vs. State of Uttar Pradesh & Anr. reported in 2014 (16) SCC 508**, wherein at paras 9 & 10 following has been held: -

*“9. In this context, a fruitful reference be made to the pronouncement in **Ram Govind Upadhyay v. Sudarshan Singh**, wherein this Court has observed that grant of bail though discretionary in nature, yet such exercise cannot be arbitrary, capricious and injudicious, for the heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependant on the factual matrix of the matter. In the said decision, reference was made to **Prahlad Singh Bhati v. NCT, Delhi** and the Court opined thus:*

‘(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.'

10. In Chaman Lal V. State of U.P., the Court has laid down certain factors, namely, the nature of accusation, severity of punishment in case of conviction and the character of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and prima facie satisfaction of the Court in support of the charge which are to be kept in mind."

A further reference to the judgment of the Apex Court passed in case **"Anil Kumar Yadav Vs. (NCT of Delhi) & Anr. reported in 2018 (12) 129"** would also be relevant wherein following has been laid down:

"17. While granting bail, the relevant considerations are :- (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard and fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.

"18. While considering the basic requirements for grant of bail, in State of U.P. through CBI v. Amarmani Tripathi, (2005) 8 SCC 21, this Court has held as under:-

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to

believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi (2001) 4 SCC 280 and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528: (SCC pp. 535-36, para 11). “11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- (c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Puran v. Rambilas (2001) 6 SCC 338.)”*

6. A further reference to Section 29 and 30 of the POCSO Act, 2012 would also be appropriate here which provides for a reverse onus suggesting that Section 29 establishes a presumption that the accused has committed an offence under sections 3, 5, 7, 9 unless the contrary is proven and this presumption can only be applied after the prosecution proves foundational facts such as victims age and the commission of the crime, whereas Section 30 creates a presumption that the accused has a culpable mental state (intention, knowledge etc.) unless the accused can prove that he did not have such a mental state.
7. Keeping in mind the aforesaid principles and position of the law and reverting back to the case in hand, the first plea of the petitioner for seeking concession of bail is that he is innocent law abiding student with no criminal antecedents. However, law is settled that a general plea of innocence cannot form a foundation or basis for grant of bail to an accused charged with the commission of a heinous offence, in that, what are relevant factors for considering a bail application of an accused are the nature of accusation, severity of punishment in case of conviction and the character of supporting evidence inasmuch as reasonable apprehension on tempering with the witness or apprehension of threat to the complainant.

8. Since the petitioner indisputably has been charged by the Trial Court for commission of a grave and heinous offence of rape upon the victim, the general plea of the petitioner that he is innocent, peace loving student of class 11th pales into significance in view of the aforesaid factors which need to be taken into consideration by the Court while considering the bail application.
9. The next plea on the basis of which the petitioner herein seeks bail is that the FIR came to be registered belatedly. However, perusal of the record available on the file bears testimony to the fact that the father of the victim had lodged a complaint before the Police Station initially on 12.04.2024, alleging therein that his daughter is missing as she had gone for picnic to Mansbal Park on the eve of Eid and that on 14.04.2024 the victim girl got traced from the Dumping Park near Wayil Bridge, Ganderbal and the FIR, although have had been registered on 12.04.2024 itself, however, the offences of rape and other connected offences in the FIR came to be subsequently added during and after the investigation, therefore, it cannot by any sense of reason be said that there has been delay in the registration of the FIR. Even if it is assumed so, same cannot be taken cognizance of by this Court at this stage.
10. As has been noticed in the preceding paras, in respect of the provisions of Section 29 and 30 of the Act of 2012, it is settled that when a person is prosecuted for committing or abetting or attempting to commit an offence

under certain provisions of the Act of 2012, including the offence under section 4, a presumption arises that such person has committed such an offence so is the position viz-a-viz the provisions of Section 30 of the Act of 2012, which as well raises a presumption of culpable mental state meaning thereby that once a person is prosecuted under certain offences under the Act of 2012, the normal presumption of innocence attached to an accused does not come into play while considering the bail application of such an accused. Therefore, in view of the aforesaid provisions of the Act of 2012 as well it cannot at this stage be concluded that the petitioner is entitled to the concession of bail.

11. Since the petitioner admittedly is charged for commission of a serious and grave offence of rape alleged to have been committed upon a minor victim, this Court cannot overlook the sacrosanct obligation cast upon it under law and grant the concession of bail to the accused /petitioner merely on the basis of a general plea that he is an innocent and law abiding student.
12. Viewed thus, for what has been observed, considered and analyzed hereinabove, the instant petition is found without any merit at this stage and is accordingly dismissed, however, it is made clear that nothing hereinabove shall be deemed to have been the expression of an opinion qua the innocence or guilt of the accused/petitioner herein and any observation if made, however, shall be deemed to have been made for the purposes of disposal of the instant bail application and same shall have no bearing upon the merits of case pending trial before the trial court.

13. Dismissed.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR:

14.10.2025

"S.Nuzhat