

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

Bail App No. 78/2026 c/w
CRM (M) No. 303/2026

Date of pronouncement: 24.06.2026

Date of uploading : 03.07.2026

Ajay Kumar Sharma

.....Applicant(s)/Petitioner(s)

Through :- Mr. Dinesh Verma, Advocate

v/s

UT of J&K and Others

.....Respondent(s)

Through :- Mr. Sumeet Bhatia, GA

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

ORDER

CRM (M) No. 303/2026

1. The petitioners seek quashment of FIR No. 0055/2026 dated 21.02.2026 registered at Police Station Udhampur for offences punishable under Section 64(2) of the Bharatiya Nyaya Sanhita, 2023, read with Section 6 of the Protection of Children from Sexual Offences Act, 2012. The petitioners contend that they had been in a consensual love relationship since the year 2024, which was within the knowledge of the families of both parties. During the course of their relationship, they established physical relations, as a consequence whereof petitioner No. 2 conceived sometime in the year 2025. Upon the families becoming aware of the pregnancy, it was mutually decided that the petitioners would solemnize their marriage immediately after petitioner No. 2 attained the age of majority, i.e., on 21.01.2026. It was further decided that the pregnancy would be medically terminated; however, petitioner No. 2 did not consent to

such termination. Thereafter, petitioner No. 2 delivered a female child at a hospital in Udhampur. According to the petitioners, it was only upon the birth of the child that the police-initiated action and registered the impugned FIR against petitioner No. 1. It is their specific case that although petitioner No. 2 had attained the age of majority at the time of delivery, the police proceeded to register the FIR on the premise that the conception had occurred while she was still a minor, despite being aware that the parents and members of the baradari of both parties had requested the police not to register any case and to treat the matter as closed.

2. It is further pleaded that the petitioners solemnized their marriage in accordance with Hindu rites and ceremonies on 23.03.2026 at Arya Samaj, Janipur Colony, Jammu, in the presence of members of both families. On the strength of the subsequent marriage and the consensual nature of their relationship, the petitioners contend that the registration and continuation of the impugned FIR constitute an abuse of the process of law and have been initiated solely to harass them.
3. This Court, vide order dated 01.04.2026, directed the Investigating Agency to proceed with the investigation but restrained it from filing the charge-sheet without obtaining prior leave of this Court.
4. It is also averred that petitioner No. 1 is serving in the Army. He had approached the Court of the learned Principal Sessions Judge, Udhampur, seeking anticipatory bail; however, his application came to be dismissed vide order dated 17.04.2026. Aggrieved thereby,

petitioner No. 1 has preferred Bail App No. 78/2026 before this Court seeking the relief of anticipatory bail.

Bail App No. 78/2026

- 1) In the bail application, the victim, who is also petitioner No. 2 in CRM (M) No. 303/2026, has been arrayed as respondent No. 3. On the previous dates of hearing, the Investigating Officer had appeared in person along with the Case Diary and was directed to ensure the presence of the victim before this Court. In compliance with the said direction, the victim appeared today accompanied by her uncle. She stated that she has now attained the age of majority. However, when queried as to whether she had consciously and voluntarily joined petitioner No. 1 in filing the petition seeking quashing of the FIR, she was unable to furnish any satisfactory explanation.
- 2) A perusal of the Case Diary reveals that on 21.02.2026, the police authorities of Police Station Udhampur received information from the Government Medical College, Udhampur that an unmarried girl, namely the victim (petitioner No. 2 in CRM (M) No. 303/2026), had delivered a female child in the labour room. Verification of her Aadhaar Card disclosed her date of birth as 26.01.2008. Although she had attained the age of majority by the time the matter came to the notice of the police, it was evident that she had conceived while she was approximately 17 years of age. The attending circumstances prima facie indicated that she had been subjected to sexual intercourse during her minority, leading to the registration of FIR No. 0055/2026 dated

21.02.2026 for offences punishable under Section 64(2) of the Bharatiya Nyaya Sanhita read with Section 6 of the Protection of Children from Sexual Offences Act.

- 3) During the course of investigation, the statement of the victim was recorded under Section 183 of the Bharatiya Nagarik Suraksha Sanhita. In her statement, she alleged that in June, 2025, while she had gone alone to fetch water, petitioner No. 1 accosted her, gagged her by placing his hand over her mouth, forcibly removed her clothes and committed rape upon her. She further stated that the accused threatened her with dire consequences if she disclosed the incident to anyone. According to the victim, she conceived as a consequence of the said act but, owing to fear of the accused and social stigma, she did not disclose either the occurrence or her pregnancy to any member of her family.
- 4) Case Diary further discloses that on 21.02.2026, when the victim developed labour pains, she informed her mother for the first time about the alleged incident of June, 2025. She was immediately taken to the Government Medical College, Udhampur, where she delivered a female child on the same day. Since the family of petitioner No. 1 declined to accept the custody and responsibility of the newborn, the infant was subsequently handed over to the Child Welfare Committee, Udhampur.
- 5) The Case Diary further reveals that petitioner No. 1, who is serving in the Army, has not joined the investigation despite repeated efforts

made by the investigating agency. Various communications addressed to the Army authorities of JAKLI-11 requesting that the accused be made available to the investigating agency have not yielded the desired response. The investigating agency has specifically stated that obtaining the DNA sample of petitioner No. 1 is imperative for conducting scientific examination and comparison with the DNA profile of the child born to the victim. According to the Case Diary, such DNA profiling constitutes vital and indispensable scientific evidence for establishing the paternity of the child and for effectively investigating the allegations levelled against petitioner No. 1.

- 6) Learned counsel for the petitioners argued that the present proceedings are nothing but an abuse of the process of law, as subsequent to the registration of the FIR, the parties solemnized their marriage on 23.03.2026. In support of the said contention, reliance was placed upon the photographs appended with the petition, which, according to the petitioners, depict the presence of family members from both sides during the marriage ceremony. It was further contended that the case arises out of a consensual relationship between the parties. While conceding that petitioner No. 2 was a minor at the inception of their relationship, learned counsel vehemently argued that the victim herself has joined petitioner No. 1 in filing petition seeking quashment of the FIR. When confronted with the statement of the victim recorded under Section 183 of the BNSS, learned counsel says that the said statement was extracted under the influence and pressure of the investigating

agency. According to him, the police, having found that the victim had conceived during her minority, deliberately fabricated the case, particularly when neither the victim's father nor her mother had lodged any complaint with the police leading to the registration of the FIR.

- 7) The respondents, however, contended that the allegations disclose the commission of serious offences involving sexual assault upon a minor girl. It was submitted that the victim, in her statement recorded before the learned Judicial Magistrate First Class under Section 183 of the BNSS, has narrated the incident in detail, thereby substantiating the prosecution case. It was further argued that since the alleged acts were committed during the minority of the victim, her consent, if any, is legally immaterial and cannot be recognized in law. Consequently, the petitioners' attempt to invoke the so-called Romeo-Juliet principle does not absolve petitioner No. 1 of criminal liability, particularly when the victim was admittedly a minor at the relevant point of time.
- 8) It was further submitted that the investigation is still in progress and that collection of DNA samples is an essential and crucial step in the investigation. Since petitioner No. 1 himself admits that he was in a romantic relationship with the victim, his DNA sample assumes significant evidentiary value for the purposes of forensic examination. According to the respondents, despite repeated opportunities, petitioner No. 1 has failed to join the investigation and submit to DNA profiling, thereby obstructing and frustrating the completion of the investigation,

which is otherwise stated to be substantially complete except for obtaining the requisite DNA samples.

- 9) After giving thoughtful consideration to the submissions advanced at the Bar, it emerges that the alleged incident took place in June 2025, at the relevant point of time, she is stated to have been between 17 and 18 years of age. However, according to the prosecution, her date of birth, as reflected in her matriculation certificate, is 20.01.2008. Consequently, by the time the FIR came to be registered on 21.02.2026, she had already attained the age of majority.
- 10) The victim has alleged that the accused subjected her to sexual intercourse against her will and without her consent while she was still a minor. She reiterated these allegations in her statement recorded before the learned Magistrate. However, subsequently, on 30.03.2026, she joined hands with the accused-petitioner and filed a petition before this Court seeking quashing of the FIR.
- 11) Significantly, the averments made in the joint petition are not entirely inconsistent with the statement made by the victim before the learned Magistrate. On the one hand, she has made allegations against the accused during the investigation, while on the other, it is alleged that she solemnized marriage with petitioner No. 1 at Arya Samaj, Janipur Colony, Jammu on 23.03.2026. Learned counsel appearing for the respondents contended that the alleged marriage has been projected only with a view to escape the rigours of criminal prosecution. Although, at first blush, the said contention appears attractive, there is

no dispute that the FIR was not lodged at the instance of the victim or her family. It was only after the victim delivered a baby girl in the hospital on 21.02.2026 that the police set the criminal law into motion, on its own. The respondents have further asserted that the petitioner's claim that the families of both parties had consented to the marriage is wholly false. Had that been so, according to the respondents, the parents of the victim would not have supported the prosecution case during the course of investigation. The accused, however, has controverted this assertion by alleging that the police, with a view to justify the registration of the FIR, prevailed upon the victim as well as her parents to make statements favourable to the prosecution. It has been further argued on behalf of the accused that the entire investigation is tainted and that the sole object of the investigating agency is to secure the arrest of petitioner No. 1 and subject him to unnecessary harassment.

- 12) If there had been any substance in the allegation that the relationship between the parties was entirely involuntary or coercive, it would be difficult to comprehend why the parties chose to solemnize their marriage after petitioner No. 2 had admittedly attained the age of majority.
- 13) It is in the aforesaid background that both the petitions require consideration. Insofar as CRM (M) No. 303/2026 is concerned, both the petitioners, including the victim herself, seek quashing of the FIR. The principal basis for seeking such relief is the marriage solemnized

between the parties on 23.03.2026, which admittedly took place after the registration of the FIR and during the pendency of the investigation.

- 14) It is an admitted position that, on the date of registration of the FIR, the victim had already attained the age of majority. Her date of birth, as recorded in the matriculation certificate, is 20.01.2008. It is equally well settled that, although the Protection of Children from Sexual Offences Act, 2012 does not prescribe any independent procedure for determination of the age of the victim, the age is required to be determined in accordance with the procedure contemplated under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The said provision provides the statutory mechanism for age determination and has consistently been applied by courts while adjudicating prosecutions under the POCSO Act (Section 34).
- 15) The Hon'ble Apex Court, in *Rajni v. State of Uttar Pradesh and Another*, 2025 INSC 737, has categorically laid that the statute prescribes a clear hierarchy of documents for determination of age. The first and foremost document is the matriculation or equivalent school certificate reflecting the date of birth; in its absence, the birth certificate issued by the Municipal Corporation, Panchayat or other competent authority is to be relied upon; and only where both such documents are unavailable can recourse be taken to medical opinion or an ossification test.

- 16) In the present case, the matriculation certificate relied upon by the petitioners records the victim's date of birth as **20.01.2008**. The material collected during investigation, as reflected in the case diary, further reveals that at the time the FIR came to be registered, the victim had delivered a female child through a normal vaginal delivery after completing approximately **36 weeks of gestation**. These facts prima facie indicate that the conception had occurred when the victim was below 18 years of age. Therefore, there appears to be considerable substance in the submission advanced on behalf of the respondents that the subsequent marriage between the victim and petitioner No. 1 was solemnized only after the victim had undergone the trauma of an unwanted pregnancy allegedly resulting from the sexual assault, and that such marriage may have been entered into with the object of enabling petitioner No. 1 to evade the consequences of the criminal prosecution.
- 17) While the victim has alleged that she was subjected to forcible sexual intercourse, she has simultaneously joined the accused in seeking quashing of the FIR. This apparent inconsistency reflects the predicament and emotional dilemma in which the victim appears to have found herself. Learned counsel for the petitioners, however, vehemently contended that the relationship between the parties was consensual throughout and that petitioner No. 1 had never resiled from his intention to marry the victim. It was further argued that the FIR was neither lodged by the victim nor by her parents and that the

criminal proceedings came to be initiated only after the hospital authorities informed the police that an unmarried girl had delivered a child, thereby rendering the prosecution an afterthought. These rival submissions, however, can only be appreciated in the light of the material collected during investigation and are matters to be examined during the course of the trial.

- 18) Be that as it may, the victim has made a statement under Section 183, which forms part of the investigation, alleging that petitioner No. 1 subjected her to sexual assault during the period when she was a minor. Even assuming that the relationship was consensual, such consent is of no legal consequence, as the victim, being a minor at the relevant time, was incapable of giving valid consent in the eyes of law. The petitioners have sought to derive support from the decision in *K. Kirubakaran v. State of Tamil Nadu*, 2025 INSC 1272 to contend that petitioner No. 1 never intended to deceive the victim but had always intended to marry her. However, the reliance is misplaced. In that case, the accused had been convicted under Section 6 of the POCSO Act, and the conviction was affirmed by the Madras High Court. Subsequently, after the conviction and sentence had attained finality, the accused and the victim solemnized their marriage in the presence of their families, and the marriage resulted in the birth of a male child. In those peculiar facts and circumstances, the Hon'ble Supreme Court, invoking its extraordinary jurisdiction under Article 142 of the Constitution of India, proceeded to quash the criminal proceedings.

The factual matrix of the said case is, therefore, entirely distinguishable from the present case.

- 19) In the present matter, the investigation is still in progress. At this stage, the petitioners have failed to establish that the allegations of forcible sexual assault levelled by the victim (petitioner No. 2) are devoid of any legal or factual foundation. Learned counsel for the petitioners also placed reliance upon *State of Uttar Pradesh v. Anurudh and Another*, 2026 INSC 47. However, the said judgment is equally inapplicable to the facts of the present case. The Hon'ble Supreme Court therein was primarily dealing with the legality of certain directions issued by the High Court, which were found to be contrary to the statutory scheme of the Juvenile Justice Act. While doing so, the Court observed that the misuse of the POCSO Act reflects a serious societal concern: on one hand, many child victims remain silenced by fear, poverty, or social stigma, rendering justice elusive; on the other hand, persons possessing social, educational, or financial privilege are, at times, able to manipulate the legal process to their advantage. The Court also noticed instances where the age of the victim is misrepresented to attract the stringent provisions of the POCSO Act, as well as cases where the statute is invoked by families to oppose consensual relationships between adolescents. It was in that context that the Hon'ble Supreme Court recommended that the Legislature consider incorporating a "Romeo and Juliet" clause in the statutory framework to exclude genuine adolescent relationships from the rigours of the Act.

- 20) It shall be open to petitioner No. 1 to establish during the course of trial that the statement made by the victim under Section 183 was the result of police influence or a tainted investigation. However, as matters presently stand, petitioner No. 1 has failed to demonstrate that the investigation is vitiated by mala fides, ulterior motives, or any procedural illegality, or that the material collected during investigation does not disclose the commission of any cognizable offence.
- 21) On the contrary, the victim has, in her statement recorded under Section 183, specifically levelled allegations against petitioner No. 1. The parents of the victim have also stated that the victim informed them that petitioner No. 1 had subjected her to forcible sexual intercourse without her consent, which ultimately resulted in her pregnancy. At the same time, it may pose a serious challenge for the prosecution during trial to explain how the victim's parents remained unaware of their daughter's pregnancy throughout its course, culminating in the delivery of a fully developed child.
- 22) While exercising jurisdiction for quashing criminal proceedings, this Court cannot undertake an appreciation of evidence or adjudicate upon disputed questions of fact, as such an exercise squarely falls within the domain of the trial Court.
- 23) In view of the foregoing discussion, **this Court is of the considered opinion that no case for quashing the proceedings is made out. Accordingly, CRM (M) No. 303/2026 is dismissed. The investigating agency shall proceed with the investigation in**

accordance with law and file the final report/charge-sheet before the competent Court.

24) While considering the present bail application, this Court, in the exercise of its jurisdiction to grant or refuse bail, is required to examine whether there exist a prima facie case or reasonable grounds for believing that the accused has committed the alleged offence. The Court is also required to take into account the nature and gravity of the accusation, the severity of the punishment in the event of conviction, and the likelihood of the accused absconding or fleeing from justice if released on bail. It is equally well settled that the mere apprehension of the accused tampering with the evidence or influencing witnesses cannot, by itself, constitute a sufficient ground for refusal of bail. However, where the material on record indicates that the accused is of such character or influence that his liberty is likely to intimidate witnesses, interfere with the administration of justice, or otherwise subvert the course of investigation or trial by tampering with evidence, the Court would be justified in declining the relief of bail.

25) In this regard, reference may be made to the decision of State of U.P. v. Amarmani Tripathi (2005) 8 SCC 21. Similar principles were reiterated by the Hon'ble Supreme Court in Vaman Narain Ghiya v. State of Rajasthan, 2009 (2) SCC 281, wherein it was held as under:

“While considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits is to be avoided. This requirement stems from the desirability that no party should have the impression that his case has been pre-judged. Existence of a prima facie case is only to be considered. Elaborate analysis or exhaustive exploration of the

merits is not required. Where the offence is of serious nature the question of grant of bail has to be decided keeping in view the nature and seriousness of the offence, the character of the evidence and amongst others the larger interest of the public.”

- 26) Learned counsel for the respondents has vehemently contended that the petitioner has neither joined the investigation nor cooperated with the investigating agency and has remained absconding since the registration of the FIR. The petitioner has, however, stoutly controverted the said allegation by submitting that he is serving in the Army and that the Investigating Officer had been duly informed of his continued service. It is argued that despite being aware of the petitioner's place of service, the investigating agency made no sincere effort to secure his custody through the competent Army authorities. A perusal of the case diary lends support to this contention, as it reveals that, apart from issuing a communication to the Army authorities requesting the petitioner's appearance, no further effective steps were taken to secure his presence. In these circumstances, the allegation that the petitioner was deliberately absconding cannot be accepted as an unquestionable fact.
- 27) It is also noteworthy that while the FIR came to be registered on 21.02.2026, the petitioner and the victim are stated to have solemnized their marriage on 23.03.2026 at Arya Samaj Janipur Colony, Jammu. According to the petitioners, the marriage was witnessed by members of both families. If this assertion is correct, it necessarily follows that the petitioner travelled from his place of posting to Jammu for the

purpose of the marriage. Such conduct does not prima facie support the prosecution's allegation that the petitioner had been evading the process of law or had intentionally absconded after registration of the FIR.

- 28) The petitioner seeks the extraordinary relief of anticipatory bail on the plea that the criminal proceedings have been initiated with an oblique motive and that the prosecution is an abuse of the process of law. It is contended that neither the victim nor her parents lodged any complaint alleging sexual assault and that the FIR came to be registered only after the hospital authorities informed the police that the victim, being an unmarried minor, had delivered a child. It is further submitted that the consensual relationship between the petitioner and the victim was well known to their respective families and that immediately after the victim attained the age of majority in the year 2026, both parties solemnized their marriage, thereby demonstrating that the petitioner never intended to commit any offence.
- 29) Learned counsel for the petitioner has further argued that the sole object of the investigating agency is to secure the petitioner's arrest so as to subject him to humiliation and unnecessary harassment, which may also result in the loss of his employment in the Army. On the other hand, learned counsel appearing for the respondents has submitted that the victim and the child are presently under the care of the Child Welfare Committee and that collection of the petitioner's DNA sample is imperative for establishing the paternity of the child,

which constitutes an important piece of evidence in the investigation. The case diary also records that the investigating agency intends to obtain the petitioner's DNA sample for this purpose.

- 30) Having considered the rival submissions, it is evident that the petitioner's consistent stand is that he was in a consensual relationship with the victim and that they solemnized their marriage after the registration of the FIR. In effect, the petitioner acknowledges that he had maintained a relationship with the victim during the period when she was a minor and that the said relationship culminated in her pregnancy and the subsequent birth of a female child. In view of this admission, there ought to be no hesitation on the part of the petitioner in submitting himself for DNA examination whenever lawfully required by the investigating agency.
- 31) The principal question that now arises for consideration is whether, in the peculiar facts and circumstances of the case, the petitioner is entitled to the relief of anticipatory bail. Having regard to the material placed on record, this Court is of the considered view that the question deserves to be answered in the affirmative.
- 32) According to the victim herself, the alleged incident occurred sometime in the month of June, 2025. It is not possible, at this stage, to conclusively determine whether the victim conceived as a consequence of a solitary act of sexual intercourse. Although she has stated that the petitioner had advised her to terminate the pregnancy, she refused to do so. It was only when she experienced labour pains that her parents

took her to the hospital at Udhampur, where she disclosed that the petitioner had subjected her to sexual intercourse. Significantly, despite the obvious social repercussions attached to such allegations, neither the victim nor her parents approached the police to lodge a complaint. The criminal law was set in motion only after the hospital authorities informed the police that the victim, being an unmarried girl who had conceived while still a minor, had delivered a child.

- 33) Learned counsel for the official respondents has fairly submitted that the marriage was merely a device adopted by the petitioner to create mitigating circumstances in his favour. Such a submission may indeed have relevance at the appropriate stage of the proceedings. Nevertheless, the admitted factual position remains that the victim was a minor at the time when the physical relationship developed and, therefore, in law, her consent would be of no consequence for the purpose of determining criminal liability under the POCSO Act. At the same time, the subsequent conduct of the parties, particularly their marriage after the victim attained majority, has neither been shown to have been brought about by coercion nor by any threat or undue influence. This aspect cannot be altogether ignored while considering the limited question of grant of bail.
- 34) The petitioner has challenged the applicability of the provisions of the POCSO Act at the very first available opportunity, namely, during the consideration of his prayer for anticipatory bail. His contention is that although the victim was below eighteen years of age, she was more

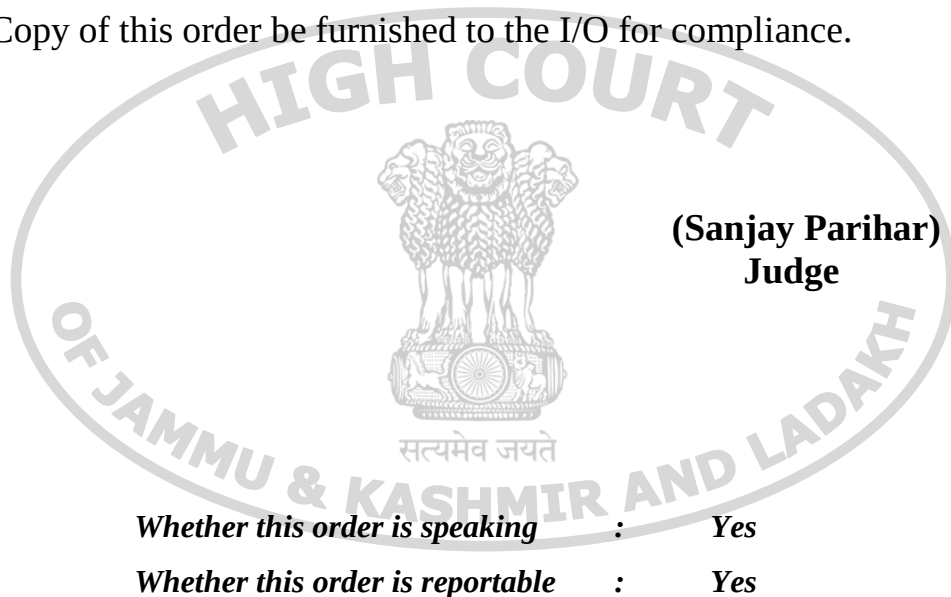
than seventeen years old, was fully conscious of her actions and had voluntarily participated in the relationship which ultimately resulted in her pregnancy.

- 35) The petitioner has also been able to demonstrate certain inconsistencies in the conduct of the victim. While, on the one hand, she has made allegations against him in her statement under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, on the other hand, after attaining majority, she voluntarily joined him in seeking quashing of the FIR. This apparent inconsistency lends some prima facie support to the petitioner's apprehension that the provisions of the POCSO Act have been invoked in circumstances where the parties themselves assert that they were in a consensual relationship. Needless to observe, the prayer for bail under the POCSO Act is required to be considered strictly in accordance with the settled principles governing grant of bail. While the victim's minority at the relevant time cannot be overlooked, her subsequent conduct and the inconsistencies in her version constitute circumstances that may legitimately be taken into account while considering the petitioner's prayer for bail. The petitioner is serving in the Army, and there is nothing on record to indicate that he is likely to flee from justice or interfere with the investigation. The fundamental object of bail is to secure the presence of the accused during the course of the proceedings, and the investigation in the present case is still underway.

36) For the foregoing reasons, this Court is satisfied that the petitioner has made out a strong *prima facie* case for grant of anticipatory bail. Accordingly, on being arrested, he shall be released from custody on his furnishing of bail and personal bond to the satisfaction of the Investigating Officer and on condition of his extending full cooperation with the investigation, enabling the later to conclude his investigation and in case charge is made out then proceed with filing of charge sheet against the petitioner. Once that stage is reached the trial court shall be free to impose further conditions for securing presence of the petitioner in trial. The bail application is, accordingly, ***disposed of.***

37) Copy of this order be furnished to the I/O for compliance.

JAMMU
24.06.2026
Manik



Whether this order is speaking : Yes
Whether this order is reportable : Yes