

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

Bail App No. 327/2025

c/w

Bail App No. 293/2025

Reserved on: 18.04.2026

Pronounced on: 24.04.2026

Uploaded on: 24.04.2026

Whether the operative part or full judgment
is pronounced: **Full judgment.**

1. Shahid Ahmed, (In Bail App No. 327/2025)

Age 25 years, S/O Farooq Bohra R/o
Dachan, Tehsil Gool District Ramban,
(J&K UT) A/P District Jail Udhampur.

2. Muzamil Aziz, (In Bail App No. 293/2025)

Age 28 years S/O Abdul Aziz Gutt R/O
Near ITI Gool, Tehsil Gool, District
Ramban

Th. Father Abdul Aziz S/O Ghulam
Ahmed Gutt R/O Near ITI Gool, Tehsil
Gool, District Ramban

.....Appellant(s)/Petitioner(s)

Through: Mr. M. A. Bhat, Advocate
Mr. Narinder Kumar Attri, Advocate.

Vs

**1. UT of J&K Th. SHO Police Station
Gool.**

**2. Superintendent District Jail
Udhampur.**

..... Respondent(s)

Through: Mr. Eishaan Dadhichi, GA.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
JUDGMENT/ORDER

1. Both these bail applications arise out of the same charge-sheet titled
“*UT of J&K vs. Muzamil Aziz and another*”, in FIR No. 76/2024 dated
14.09.2024 of Police Station, Gool for commission of offences under
Sections 376-D, 34, 506 IPC, pending before the Fast Track Court,

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Ramban (for short ‘the Trial Court’), as such, both these applications are being decided by this common order.

2. Petitioner-Shahid Ahmed, in Bail App No. 327/2025, is seeking bail on the ground that he was initially not named in the first information report and the statement made by the prosecutrix in the court is full of contradictions, exaggerations and improvements and further that she has denied the entire contents of the FIR. It is further stated that even the DNA test has established the first version of the prosecutrix and the benefit of the irreconcilable conflict between the first statement and the later version of the prosecutrix has to be given to the petitioner. It is also urged that the DNA test conducted during the investigation falsifies the statement of the prosecutrix recorded under Section 183 BNSS and her statement before the learned trial court.
3. Petitioner-Muzamil Aziz in Bail App No 293/2025 is seeking bail on the ground that the learned trial court has not taken into consideration that the alleged occurrence relates back to the month of January 2024 but reported for the first time on 14.09.2024 after birth of the child and that the entire version of the FIR was negated by the prosecutrix during her statement recorded before the learned trial court. It is also stated that out of 19 witnesses cited by the prosecution, 5 witnesses, who are the material witnesses of the prosecution stand already examined.
4. The respondents have filed the response, thereby narrating the factual aspects of the case and it is stated that the FIR was registered on

14.09.2024 bearing FIR No. 76/2024, pursuant to the complaint submitted by the prosecutrix and during her statement recorded before the Magistrate, under Section 183 of BNSS, offences under Sections 376-D, 34 and 506 IPC were added and Section 376 IPC was deleted, as the prosecutrix, in her statement, had stated that she was raped multiple times by Muzamil Aziz and thrice by Shahid Ahmed. The victim had also given birth to a baby girl. It is further stated that the report of the DNA profiling was also obtained. Accordingly, chargesheet against the petitioners was filed before the learned trial court for commission of offences under Section 376-D, 34 and 506 IPC.

5. Mr. M. A. Bhat, learned counsel appearing for petitioner-Shahid Ahmed has submitted that the petitioner-Shahid Ahmed was never named as accused in FIR and he has been falsely implicated in the case and he further submitted that the prosecutrix has made contradictory statements in her deposition before the learned trial court.
6. Mr. Narinder Kumar Attri, learned counsel for the petitioner-Muzamil Aziz has submitted that the prosecutrix has stated in her cross-examination that had she not become pregnant, she would have never made any complaint before the Police. He has further argued that there are different versions of the prosecutrix with regard to the occurrence, as such, the petitioner deserves to be enlarged on bail.

7. *Per contra*, Mr. Eishaan Dadhichi, learned GA appearing for the UT of J&K has submitted that the petitioners have been charged for commission of offences under Sections 376-D, 34 and 506 IPC and as a result of commission of rape of the prosecutrix, one female child was also born, who was surrendered by the prosecutrix to the Child Welfare Committee. He has vehemently argued that both the accused have sexually exploited the poor girl and she has categorically made statement against both the petitioners and while considering the bail application, evidence cannot be appreciated.

8. **Heard learned counsel for the parties and perused the record.**

9. The record depicts that initially in the FIR, 376 IPC was registered only against accused Muzamil Aziz, however, when the statement of the prosecutrix was recorded before the learned Magistrate under Section 183 of BNSS, it came to the fore that she was sexually exploited not only by Muzamil Aziz but also by Shahid Ahmed, who happened to be her friend. As a result of the rape, a female child was born and the medical officer collected the DNA sample from the victim, her baby and both the accused persons. The DNA profiling report confirmed that Muzamil Aziz is the biological father of the victim's child, as his DNA matched with the child, whereas DNA of Shahid Ahmed did not match. In her statement before the Magistrate, she had categorically stated that not only Muzamil Aziz but also Shahid Ahmed repeatedly raped her, as a result of which offence under Section 376-D IPC was established by the Investigating Officer

against both the accused. The victim's girl child was surrendered by her and was staying in Special Adoption Agency (SAA), Maitra Ramban. After conclusion of the investigation, charge-sheet for commission of offences under Sections 376-D, 34 and 506 IPC was filed against the petitioners before the learned trial court and charges for commission of above mentioned offences were framed against the petitioners on 05.03.2025.

10. There are serious allegations of sexually exploiting the prosecutrix against the petitioners. They have not only shattered the life of the prosecutrix, but as a result of offence of rape committed by the petitioner-Muzamil Aziz, one female child has also born, who has been left at the mercy of almighty, as the prosecutrix too has surrendered her before the Child Welfare Committee and as per the charge-sheet, the child is staying in Special Adoption Agency (SAA), Maitra Ramban.
11. Though, name of Shahid Ahmed was not mentioned in the FIR initially, but subsequently, in her statement before the Magistrate she had categorically deposed against Shahid Ahmed as well, as a result of which, Investigating Officer deleted offence under Section 376 IPC and added offence under Section 376-D IPC against both the accused persons.
12. This Court has examined the statement of the prosecutrix and it is not forthcoming from her statement that the prosecutrix has either exonerated the petitioners or has turned hostile against prosecution.

The petitioners, in fact, want this Court to appreciate evidence of the victim, which this Court cannot, while considering the bail application.

13. It is settled law that while considering the bail application, Court can only look into evidence so as to find out as to whether there is any evidence against the accused or not, but can in no manner, appreciate the evidence brought on record, the exercise to be conducted by the learned trial court while deciding the case finally.
14. Reliance is placed upon the decision of the Apex Court in case titled as **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and another** reported in **(2004) 7 SCC 528** wherein the parameters to be taken into consideration for grant of bail by the Courts have been explained in the following words:

“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 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)”

15. Offence under Section 376-D IPC is heinous in nature and is punishable with rigorous imprisonment for a term not less than 20 years and extendable to life.
16. The petitioners were arrested on 20.09.2024 and were charged on 05.03.2025. A perusal of the scanned record summoned by this Court reveals that seven witnesses have been examined by the prosecution. However, learned counsel for the petitioners has submitted that three more witnesses have been examined, meaning thereby, during the span of one year and two months, ten witnesses have already been examined and it cannot be said that right of the petitioners to speedy trial has been violated, as the prosecution has been diligently producing the witnesses before the learned trial court and rather on couple of occasions, witnesses could not be examined due to absence of learned counsel representing the petitioners.
17. The Hon’ble Supreme Court of India, in an appeal challenging grant of bail in **Bhagwan Singh vs. Dilip Kumar @ Deepu @ Depak and another** reported in **2023 INSC 761** has observed as under:

“17. The offence alleged in the instant case is heinous and would be a onslaught on the dignity of the womanhood and the age old principle of यत्र नाययस्तुपूज्यन्तेरमन्तेतत्र देवता: (where women are respected Gods live there) would recede to the background and the guilty not being punished by process of law or accused persons are allowed to move around freely in the society or in spite of there being prima facie material being present they are allowed to move

around freely in the society before guilt is proved and are likely to indulge in either threatening the prosecution witnesses or inducing them in any manner to jettison the criminal justice system, then the superior court will have to necessarily step in to undo the damage occasioned due to erroneous orders being passed by courts below.”

18. The allegations levelled against the applicants are not only grave and heinous but strike at the very conscience of society. The material on record, including the medical evidence and the birth of a child as a direct consequence of the alleged repeated sexual assault, prima facie establishes a case of extreme depravity. In matters of gang rape, the individual liberty of the accused must yield to the collective interest of the community and the need to protect the victim from potential intimidation. Given the nature of the evidence, the severity of the punishment prescribed under Section 376-D of the IPC, and the high probability of the accused influencing witnesses or tampering with evidence in a case of this magnitude, this Court finds no merit in the application.

19. Reliance is placed upon the decision of the Apex Court in case titled as **X vs. State of Rajasthan** reported in **2024 INSC 909** wherein the Hon’ble Supreme Court has held as under:

“14. Ordinarily in serious offences like rape, murder, dacoity, etc. once the trial commences and the prosecution starts examining its witnesses, the Court be it the trial court or the High Court should be loath in entertaining the bail application of the accused.”

20. Furthermore, this Court cannot remain oblivious to the tragic fate of the innocent child born out of this heinous act. The child, already

bearing the lifelong stigma of being born from such a traumatic event, now faces the double blow of abandonment by the mother, who herself is likely grappling with profound psychological scars. The accused, by their alleged actions, have not only violated the dignity of the prosecutrix but have also effectively orphaned a child, leaving her to the mercy of the state or charitable institutions. This cascading effect of the crime where a new life is rendered vulnerable and destitute from birth adds a layer of social and moral depravity that weighs heavily against the grant of any discretionary relief.

21. In view of the above, this Court is of the considered view that petitioners cannot be granted bail at this stage, as such, both the bail applications are dismissed. It is made clear that this Court has not returned any finding qua the evidence brought on record by the prosecution before the learned trial court and finding, if any, by this Court is solely for the purpose of deciding bail applications.

22. **Dismissed.**

(RAJNESH OSWAL)
JUDGE

Jammu
24.04.2026
Sahil Padha

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes

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