

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

CRM(M) 296/2023 CrIM(740/2023)

**UNION TERRITORY OF JAMMU
AND KASHMIR THROUGH
STATION HOUSE OFFICER
POLICE STATION BEHIBAGH
KULGAM**

...Petitioner(s)

Through: Mr. Waseem Gul, GA.

Vs.

ARIF MANZOOR SHAH

...Respondent(s)

Through: Mr. Ishfaq Ahmad, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

31.08.2026

1. Heard learned counsel for the petitioner and gone through the record of the case.
2. The brief facts giving rise to the present proceedings are that, in connection with an incident alleged to have occurred on 16.08.2021, the respondent-accused, Arif Manzoor, came to be prosecuted for offences punishable under Sections 376, 354-C, 354-D and 506 of the Indian Penal Code and Section 67 of the Information Technology Act. By virtue of order dated 29.10.2022, the learned Additional Sessions Judge, Fast Track Court, Kulgam (hereinafter referred to as "the Trial Court"), admitted the respondent-accused to bail, primarily on the ground that he had remained in custody for more than

fourteen months and that the victim, as well as other material prosecution witnesses, had already been examined. The learned Trial Court, while taking note of the serious and grave nature of the accusations, was of the view that continued incarceration of the respondent-accused was not warranted, particularly having regard to the presumption of innocence operating in his favour. Trial Court also took into consideration the statement of the victim, which constituted the principal evidence relied upon by the prosecution, and noticed certain infirmities therein. Upon an overall consideration of the material available on record, the learned Trial Court formed the opinion that the respondent-accused deserved to be enlarged on bail.

3. The Union Territory of Jammu and Kashmir has assailed the aforesaid order primarily on the ground that the Trial Court failed to appreciate the controversy in its proper perspective. It is contended that the allegations against the respondent-accused are grave and serious, inasmuch as he is alleged to have lured the victim to a secluded place, manhandled and sexually assaulted her, recorded the alleged act on video and thereafter blackmailed her. It is, accordingly, urged that, having regard to the nature and gravity of the accusations, the respondent-accused ought not to have been enlarged on bail. It is further contended that bail in respect of a non-bailable offence cannot be claimed as a matter of right.

4. Per contra, learned counsel appearing for the respondent-accused submits that the prosecution case is false and that the Trial Court, after duly considering the material available on record, has passed a reasoned and well-considered order which does not warrant interference. It is further submitted that the relationship between the parties was consensual and that the same subsequently culminated in marriage, with the parties presently living together as husband and wife.
5. Having heard learned counsel for the parties and perused the material on record, it needs to be noticed at the outset that the impugned order was passed as far back as on 29.10.2022. At the time of grant of bail, some of the material prosecution witnesses, including the victim, had already been examined. The respondent-accused has, thus, continued to remain on bail for a considerable period. There can be no dispute that the accusations levelled against the respondent-accused are grave in nature. The seriousness of an accusation is undoubtedly a relevant consideration while dealing with the question of bail. It cannot, however, be the sole consideration, and has to be weighed along with the other attending circumstances of the case.
6. A perusal of the impugned order reveals that the Trial Court exercised its discretion after taking into account the material available before it, including the period of incarceration already undergone by the respondent-accused, the examination of the victim and other material witnesses, the

nature of the evidence brought on record and the presumption of innocence operating in favour of the accused. The learned Trial Court also took note of the defence plea regarding the nature of the relationship between the parties. Trial Court further took into consideration the fact that the material witnesses had already been examined and, therefore, found no useful purpose in continuing the incarceration of the respondent-accused. Upon examination of the impugned order, this Court finds that the discretion exercised by the learned Trial Court is founded upon relevant considerations and cannot be characterised as arbitrary, perverse or manifestly unreasonable so as to warrant interference.

7. It is also pertinent to notice that, during the course of trial and upon cross-examination of the prosecution witnesses, certain contradictions and discrepancies appear to have been elicited by the defence from the testimony of the victim as well as other prosecution witnesses. At the stage of considering the validity of an order granting bail, it would neither be appropriate nor permissible for this Court to undertake a detailed appreciation of such evidence or to record any finding touching upon the merits of the prosecution case. Suffice it to observe that the material noticed by the learned Trial Court constituted a relevant circumstance for the limited purpose of considering the prayer for bail.
8. It is well settled that cancellation of bail already granted stands on a footing different from rejection of bail in the first

instance. Once liberty has been granted to an accused by a competent court upon consideration of the relevant material, such liberty ought not to be lightly interfered with unless the order granting bail suffers from perversity, illegality or non-application of mind, or subsequent events demonstrate misuse of the concession of bail, such as interference with the course of justice, intimidation of witnesses, tampering with evidence, evasion of the process of law, or other conduct rendering continuation of bail unconducive to a fair trial.

9. In the present case, counsel for the petitioner has vehemently contended that, after being enlarged on bail, the respondent-accused extended threats to the prosecution witnesses with a view to derailing the prosecution. The submission, however, does not find adequate factual support from the record. No material has been placed before this Court to show that, subsequent to the grant of bail, any complaint or application was moved before the learned Trial Court alleging intimidation of witnesses or interference with the recording of evidence. Nor has any report of the learned Trial Court been brought on record indicating that the respondent-accused has obstructed or otherwise interfered with the proceedings.
10. Learned counsel for the petitioner has also placed reliance upon an observation contained in the order of the learned Trial Court to the effect that the complainant/victim had stated that the respondent-accused was extending threats to her so as to prevent her from making a statement.

11. The aforesaid circumstance, by itself, is insufficient to justify cancellation of bail at this stage. The victim did, in fact, enter the witness box, make her statement before the learned Trial Court and subject herself to cross-examination. More importantly, no subsequent material has been placed on record to establish that, after grant of bail, the respondent-accused intimidated the victim or any other prosecution witness, tampered with the evidence or otherwise interfered with the course of trial.
12. The respondent-accused has been enjoying the concession of bail since 29.10.2022. Nothing has been brought to the notice of this Court to demonstrate that, during this period, he has misused the liberty granted to him or acted in a manner prejudicial to the fair conduct of the trial. In the absence of any such material, and there being no perversity or patent illegality discernible in the order granting bail, this Court finds no justification for unsettling the discretion exercised by the learned Trial Court after such a considerable lapse of time.
13. It bears reiteration that the observations made hereinabove are confined to the adjudication of the present application and shall not be construed as an expression of opinion on the merits of the prosecution case. The learned Trial Court shall decide the matter independently on the basis of the evidence brought before it and uninfluenced by any observation made either in the impugned bail order or in the present order. For

the foregoing reasons, this Court finds no merit in the present application. The same is, accordingly, dismissed.

14. In case the trial is still pending, the learned Trial Court shall make all possible endeavours to expedite the proceedings and bring the trial to its logical conclusion, in accordance with law.

(Sanjay Parihar)
Judge

SRINAGAR:

31.08.2026

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