

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

**CRM(M) 439/2026
CrIM(1003/2026)**

**Union Territory Through Police Station
Charari Sharief.**

...Petitioner(s)

Through: Mr. Bikramdeep Singh, Dy. AG

Vs.

Ghulam Ahmad Sheikh.

...Respondent(s)

Through:

CORAM: HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE.

ORDER (ORAL)

06.07.2026

01. This petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS) is directed against the order dated 28.11.2025 passed by the court of learned Additional Sessions Judge (Fast Track Court), Budgam [the Trial Court], whereby the application filed by the Prosecution under Section 540 of the Jammu & Kashmir Criminal Procedure Code, corresponding to Section 348 of BNSS, seeking summoning and examination of prosecution witnesses particularly PW1 (Prosecutrix/Victim), PW2 and PW4 after closure of the prosecution witnesses, has been rejected.

02. Since the challan has been pending disposal for a considerably long time and also going by the advanced age of the accused, the matter is taken up on board for disposal at this stage.

03. Briefly put, FIR No. 50/2018 under Section 376/511 of the Ranbir Penal Code (RPC) was registered against the respondent (accused). Charge sheet was presented on 18.09.2018 and charges were framed on 04.02.2019.

04. The case involves a serious allegation of attempt to commit rape. The trial remained pending for about seven years, during which out of total listed four prosecution witnesses, only PW3 could be examined over this long period of time. On 20.11.2025, the right of prosecution to lead further

evidence was closed. Immediately thereafter, the learned Public Prosecutor moved an application under Section 540 CrPC for summoning the remaining material witnesses. The Trial Court vide impugned order rejected the application primarily on the ground of delay and lack of diligence on the part of the Prosecution and directed action against the concerned Assistant Public Prosecutor (APP).

05. After hearing the learned counsel for the petitioner and on perusal of the averments contained in the petition as well as the impugned order, it appears that the learned Trial Court has given short shrift to the entire prosecution case, thereby overlooking the valuable right of the victim.

06. The offence under Section 376/511 RPC is grave and serious in nature. The evidence of the Prosecutrix (PW1) is of paramount importance in cases of this nature. Denial of opportunity to examine star witnesses would cause grave miscarriage of justice and defeat the very object of a fair trial.

07. The jurisdiction of the trial court to summon any witness at any stage of the trial, where evidence appears essential to the just decision of the case, is not controlled by the stage of the trial. This power must be exercised in favour of truth seeking, especially in sexual offence cases where victim's testimony forms the bedrock of the Prosecution case.

08. The Hon'ble Supreme Court in "***Zahira Abdullah Sheikh vs & Anr vs State of Gujrat & Others***" reported in "***AIR 2006 SC 1367***" has authoritatively held that "*A criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves.*"

09. The trial spanned the Covid-19 period. The accused stated to have remained absent only on two dates due to pandemic. The material on record shows repeated directions issued to the Prosecution, but complete inaction by the Investigating/Prosecuting agency for years cannot be

allowed to result in acquittal of the accused on technicalities, when the victim is yet to be examined. Court cannot close eyes to the systemic failures of Prosecution in heinous and serious cases.

10. It is the fundamental right of the Victim under Article 21 of the Constitution to participate meaningfully in the trial. Closing the evidence at this stage would violate the valuable fundamental right of the Victim to have a fair and meaningful trial.

11. It appears that the learned Trial Court was sympathetic to the advanced age of the accused, but this cannot be a sole ground to deny fair opportunity to the Prosecution in a serious sexual offence case, leaving it to the sweet will of the Prosecution to produce the prosecutrix.

12. Speedy trial is the right of both the accused and the victim. The accused can still seek appropriate remedies, if the trial is further prolonged unreasonably.

13. Nonetheless, the learned Trial Court was justified in expressing displeasure over the gross negligence of the prosecuting agency, however, instead of rejecting the application outrightly, the court could have allowed the application with costs/debarment of further adjournments and directed departmental action against the erring officers simultaneously.

14. Where a case involves a heinous offence, particularly one involving the modesty of a woman, the court is expected to take a participatory role in the trial. This is not only the prerogative but also the plain duty of the Court to examine such of those witnesses as it can deem to be necessary for doing complete justice between the State and the parties.

15. For the foregoing reasons, this petition is allowed and the impugned order dated 28th November, 2025 passed by the learned Trial Court is set aside. The learned Trial Court is directed to summon PW1 (Prosecutrix/Victim), PW2 and PW4 forthwith by issuing bailable/non-bailable warrants, if necessary, and examine them on the next date(s) of hearing, without granting unnecessary adjournment(s). The Trial Court shall make every endeavor to conclude the trial expeditiously, preferably within a period of two months from the date of receipt of copy of this order.

16. Before parting, it is deemed proper to direct the Director General of Prosecution to identify the officers responsible for prolonged delay in

producing the prosecution witnesses and take appropriate departmental action in the matter. A compliance report in this regard shall be filed before the learned Trial Court within a period of four weeks. Upon receipt of same, the learned Trial Court shall make appropriate recommendations in the given facts and circumstances, to the competent authority.

17. Petition is accordingly ***disposed of*** along with connected applications in the manner indicated above.

18. Copy of this order be sent to the learned Trial Court as well as the Director General of Prosecution for compliance.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR:

06.07.2026

"Hamid"

