

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

**Bail App 248/2025
CrIM(1981/2025)**

**UNION TERRITORY THROUGH POLICE
STATION LITTER (POLICE / HOME)**

...Appellant(s)\Petitioner(s)

Through: -
Mr. Jehangir Dar, GA.

V/s

MOMIN ABASS DAR

... Respondent(s)

Through: -
Mr. Shahid Farooq, Advocate.
Mr. Irfan Abbass, Advocate.

CORAM:

HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

**(ORDER)
08.09.2026**

- 1.** Heard learned counsel for the parties and perused the record.
- 2.** The respondent-accused has been charged with the commission of offences punishable under Sections 363, 366 and 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, "the POCSO Act"), arising out of an incident alleged to have occurred on 25.02.2024, when the victim was reported missing. Her father, who is also the complainant, lodged a missing report in this regard. Subsequently, the victim was recovered at Jammu in the company of the respondent-accused, and it is alleged that the two were planning to leave for Delhi. The victim was thereafter reunited with her family and subjected to medical

examination. Upon completion of the investigation, the respondent-accused was charge-sheeted for the aforesaid offences.

3. During the course of trial, the prosecution examined the victim, her father and certain other witnesses. While the trial was pending, an application for grant of bail was moved on behalf of the respondent-accused on 21.04.2024. By order dated 14.08.2025, the learned trial Court enlarged the respondent-accused on bail, primarily noticing that, out of 14 witnesses cited by the prosecution, nine, including the material witnesses, had already been examined. The trial Court also adverted to the testimony of the victim and her father. From the testimony of the victim, it emerged that she had herself asked the respondent-accused to take her along and had voluntarily accompanied him on 25.02.2024. A similar version had been given by her in the statement recorded before the Magistrate.
4. Aggrieved of the aforesaid order, the petitioner-Union Territory of Jammu and Kashmir has invoked the jurisdiction of this Court under Section 528 read with Section 483(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, “BNSS”), seeking setting aside of the order granting bail. The principal contention urged on behalf of the petitioner is that the trial Court failed to exercise the discretion vested in it in accordance with law. It is submitted that, having regard to the nature and gravity of the accusations, the trial Court failed to appreciate the facts and circumstances in their proper perspective and overlooked the statutory scheme governing the offences in question.
5. Ld. counsel for the petitioner has vehemently contended that the trial Court fell in error in placing reliance upon the circumstance that the

victim was a consenting party and that the alleged elopement had taken place at her instance. It is urged that, the victim being a minor, her consent has no legal efficacy for the purposes of the offences alleged under the POCSO Act. It is further contended that the trial Court failed to take into account Section 29 of the POCSO Act, which provides for a statutory presumption in respect of the offences specified therein.

6. Having heard learned counsel for the parties and perused the record, it transpires that, subsequent to the grant of bail to the respondent-accused, the trial has progressed considerably and some further witnesses have also been examined. The trial is, thus, stated to be at its fag end. There can be no quarrel with the proposition that, for the purposes of the POCSO Act, the purported consent of a child cannot be accorded legal recognition so as to exonerate an accused from criminal liability where the ingredients of the offence are otherwise established. That said, while examining the legality and propriety of the discretion exercised by the trial Court in granting bail, the peculiar facts and circumstances emerging from the record cannot altogether be disregarded.

7. As per the record, the respondent-accused was stated to be about 18 years of age at the time of the alleged occurrence, whereas the victim, according to the prosecution case, was above 15 years of age. Learned counsel for the respondent-accused has contended that the victim was herself close to attaining majority and was conscious of the nature and consequences of her actions. In support thereof, reliance has been placed upon her statement recorded under Section 183 of the BNSS, wherein she stated that she had herself initiated the act of leaving with

the respondent-accused and that they were in a relationship. The said version, it is submitted, has been substantially reiterated by her during the course of trial. Significantly, the father of the victim, during his cross-examination, is also stated to have acknowledged that the victim and the respondent-accused were in love- relationship. His testimony further indicates that his elder daughter was 24 years of age and that the victim was born thereafter.

8. In the aforesaid factual backdrop, the submission advanced on behalf of the respondent-accused that the victim was approaching the age of majority is a circumstance which, for the limited purpose of examining the correctness of the order granting bail, cannot be altogether brushed aside. This circumstance, however, is not to be understood as conferring legal validity upon the consent of a minor for the purposes of the POCSO Act.

9. Thus, notwithstanding the serious nature of the offences alleged against the respondent-accused, this Court, while examining a prayer for cancellation of bail, cannot remain oblivious to the subsequent developments in the case, including the substantial progress of the trial, examination of the material witnesses, the age of the respondent-accused, the age of the victim as projected by the prosecution, and the version consistently attributed to the victim regarding the circumstances in which she accompanied the respondent-accused.

10. In the peculiar facts and circumstances of the case, particularly when the respondent-accused was stated to be about 18 years of age at the relevant time; the victim, though admittedly a minor as per the prosecution case, was stated to be above 15 years of age; the parties

were stated to be in a relationship; and the material witnesses, including the victim and her father, had already been examined before the grant of bail, the trial Court cannot be said to have acted wholly unreasonably or perversely in taking these circumstances into consideration while exercising its discretion in favour of the respondent-accused.

11. This Court is mindful that the POCSO Act is a special enactment intended to protect children from sexual assault, sexual harassment, and that its statutory safeguards must receive their full effect. The legal incapacity of a child to consent cannot be diluted merely on account of the nature of the relationship asserted between the parties. Nevertheless, the present proceedings concern the correctness of an order granting bail and not the final determination of the criminal liability of the respondent-accused. The circumstances emerging from the evidence already recorded, therefore, cannot be ignored while considering whether a case for cancellation of bail has been made out.

12. Insofar as Section 29 of the POCSO Act is concerned, the statutory presumption contemplated thereunder operates in accordance with law upon establishment of the foundational facts necessary to attract the provision. Its existence is undoubtedly a relevant consideration; however, at the stage of examining an order granting bail, it cannot be viewed divorced from the evidence and circumstances already brought on record. In the present case, the cross-examination of the victim, her father and other witnesses is stated to have brought forth circumstances which the trial Court considered relevant while assessing the prayer for bail. Whether those circumstances are sufficient to rebut the statutory

presumption or otherwise affect the prosecution case is ultimately a matter for determination at the conclusion of the trial and ought not to be conclusively pronounced upon at this stage.

13. Viewed thus, and particularly having regard to the fact that the material witnesses have already been examined and the trial has substantially progressed, this Court does not find sufficient ground to interfere with the discretion exercised by the learned trial Court in enlarging the respondent-accused on bail. The impugned order, therefore, does not warrant interference in the exercise of jurisdiction invoked by the petitioner.

14. Accordingly, the instant application, being devoid of merit, is dismissed. The trial Court shall, however, proceed with the trial with due expedition and make every endeavour to conclude the same at the earliest.

15. It is made clear that the observations made hereinabove are confined solely to the consideration of the challenge to the order granting bail and shall not be construed as an expression of opinion on the merits of the case. The trial Court shall decide the matter independently, strictly on the basis of the evidence brought before it and in accordance with law, uninfluenced by any observation made in the present order.

(SANJAY PARIHAR)
JUDGE

SRINAGAR
08.09.2026
Shaista-PS