

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CRM(M) No. 444/2024

c/w

Bail App No. 136/2024

CRM(M) No. 455/2024

Shafarit Hussain

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

Through: Mr. Sunil Sethi, Sr. Adv. with
Mr. Matloob Hussain, Adv.

vs

Union Territory of J&K and another

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy.AG for No. 1
Mr. Sandeep Singh, Adv for No. 2
IO present along with CD file.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
03.09.2024

Bail App No. 136/2024

- 1 The petitioner herein in the instant petition is seeking bail in anticipation of his arrest in FIR No. 0163 dated 07.06.2024 registered with Police Station, Domana Jammu for offences under sections 376 IPC and sections 8 and 17 of the Protection of Children from of Sexual Offences (POCSO) Act, 2012.
- 2 The facts giving rise to the filing of the instant petition reveals that the FIR No. 0163/2024 (supra) came to be registered upon a complaint filed by respondent 2 herein pursuant to the directions passed by the Special Mobile Magistrate (Electricity) Jammu dated 03.06.2024 wherein it had been alleged by the complainant/respondent 2 herein that she being a widow is living with her 10 years old daughter at Raipur Jammu and that two years back, she came in contact with the accused-petitioner herein being a police personnel working in the Police Department who told the

complainant/respondent 2 herein that he is not having good relations with his wife and intends to divorce her and thereafter, would marry with the complainant respondent 2 herein and that since the accused-petitioner is a Muslim and being already married, as such, the complainant/respondent 2 did not agree to his proposal, however, upon his insistence, she agreed to the proposal with the condition that the accused-petitioner shall divorce his wife in the first instance and that thereafter the accused-petitioner herein persuaded her to have physical relations which she agreed to under compelling circumstances with an understanding that the accused-petitioner herein would marry her, whereafter the accused-petitioner herein, however, avoided the said marriage on one pretext or the other and had an intention from the very inception to deceive complainant/respondent 2 herein for having physical relation with her and that on 28.04.2024, the accused-petitioner herein came to her house when her minor daughter was alone therein in the house and tried to commit sexual assault on her and at that very movement, the complainant/respondent 2 herein came back to her house and saved her minor daughter from the clutches of the accused-petitioner herein, whereafter, the accused-petitioner instead of seeking an apology from the complainant/respondent 2 herein, threatened her of getting her involved in some false case of his being a police personnel and that the accused-petitioner herein and his wife are putting up pictures of the complainant respondent 2 herein on social media and are also threatening to eliminate her along with her family members and that the accused-

petitioner herein played with her life, had sexual relation with her under false promise of marriage and in fact committed an offence of rape.

3 The accused-petitioner herein, while maintaining the instant petition for seeking bail in anticipation of arrest, has stated that the accusations leveled against him by complainant-respondent 2 herein are false, but willful in order to malign and injure his reputation by getting him arrested and that the said baseless allegations have been leveled against the accused-petitioner herein with an ulterior motive to wreck personal vengeance and that the offences which are alleged to have been committed by the accused-petitioner herein in the FIR in question are neither punishable with life imprisonment nor death and that the accused-petitioner herein in the event of his arrest in the FIR in question is bound to suffer an irreparable loss and injury in all respect.

4 **Objections** to the petition have been filed by respondent 1 wherein it is being, *inter alia*, stated that the accused-petitioner herein cannot claim bail as a matter of right for the offences in question and that the grant of bail to the accused-petitioner will have an effect on the investigation of the case and that since the investigation of the case is going on, the grant of bail at this stage to the accused-petitioner would hamper the same.

Heard learned counsel for the parties and perused the record.

5 Before proceeding to consider the instant petition, it would be appropriate and advantageous to refer hereunder to the position of law laid down by the Apex Court in case titled as **Anil Kumar Yadav v S (NCT of Delhi) and another**, reported in **2018(12) SCC 129** relating to the subject of

bail/anticipatory bail and issues connected therewith being relevant and germane herein:

“15. As held in Puran case [2001(6) SCC 338], while considering the question of grant of bail, court should avoid consideration of details of evidence as it is not a relevant consideration. While it is necessary to consider the prima facie case, an exhaustive exploration of the merits of the case should be avoided. We, therefore, consciously refrain from considering the merits of the consciously refrain from considering the merits of the materials/ evidence collected by the prosecution.”

Further the Apex Court in case titled as **“Dr. Naresh Kumar Mangla vs. Smt. Anita Aggarwal and others, Etc.”** in Criminal Appeal Nos. 872-873 of 2020, arising out of SLP (Crl.) Nos. 4935-4936 of 2020, at para 17, has noticed as under: -

“17. In the recent decision of the Constitution bench in Sushila Aggarwal vs. State (NCT of Delhi), the considerations which ought to weight with the Court in deciding an application for the grant of anticipatory bail have been reiterated. The final conclusions of the Court indicate that:

“92.1....The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed.

92.3....While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

92.4 Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be

imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

6. Keeping in mind the aforesaid position and principles of law and the case set up by the accused-petitioner herein, inasmuch as, the objections filed to the petition by the respondent 1 herein, the accused-petitioner admittedly is involved in the commission of offences under section 376 IPC and sections 8 and 17 of the POCSO Act, 2012, as such, the contentions urged by the petitioner that he did not commit the said offences and that he has been falsely implicated therein can neither be looked into by this Court at this stage unless the investigation of the case is completed by the Investigating Agency nor can the said contention of innocence of the petitioner be taken to be as a gospel truth at this stage. The nature and gravity of the accusations coupled with the allegations leveled in the FIR against the accused-petitioner herein on the basis of the complaint filed by respondent 2 herein, inasmuch as, the status of the investigation taken cognizance by this Court while perusing the CD file produced during the course of hearing of the instant application, it is manifest that the investigation in the case is at its infancy stage and granting of bail in anticipation of arrest to the accused-petitioner herein at this stage of the investigation, is likely to effect the investigation of the case, in that, there is every likely hood that the accused-petitioner being a police personnel may tamper with the evidence or else intimidate the witnesses including the complainant respondent 2 herein as also to influence the course of investigation.
7. Under the aforesaid facts and circumstances, the concession of anticipatory bail sought by the accused-petitioner herein is declined, more so, in view of

the following excerpt extracted from the judgment of the Apex Court passed in **Neeru Yadav v State of Uttar Pradesh and another**, reported in (2014) **16 SCC 508**, which reads as under:

“.....A democratic body polity which is wedded to the rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the society. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the sem of social stream. It is impermissible. Therefore, an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

7. Viewed thus, the petition is dismissed. It is, however, made clear that any observation made hereinabove shall not be construed to be expression of any opinion about the guilt or innocence of the accused-petitioner herein and any such observations shall be deemed to have been made for the purpose of the disposal of the instant petition.

(JAVED IQBAL WANI)
JUDGE

Jammu
03.09.2024
Rakesh

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No