Sr. No.55
Regular List

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

CRM(M) No.121/2021

MUBARAK AHMAD BEIGH …Petitioner(s)

Through: Mr. M. Ayoub Bhat, Advocate, with
Ms. Mahjabeen, Advocate.

Vs.

UT OF J&K & ANR. …Respondent(s)

Through: Mr. Mubeen Wani, Dy. AG with S. I. Gh. Mohammad No.24/AWT of P/S Devsar.
Mr. Shuja-ul-Haq, Advocate.

CORAM:HON'BLE MR. JUSTICE SANJAY DHAR,JUDGE

ORDER(ORAL)
22.07.2024

1. The petitioner through the medium of instant petition has challenged FIR No.10/2021 for offences under Section 452, 354-A, 376/511, 506 of IPC and Section 8 POCSO Act registered with Police Station, Devsar Kulgam.

2. As per the impugned FIR, on 05.03.2021, one Shabroza Akhter along with the prosecutrix lodged a written report with the police alleging therein that on the said date, in the evening when the prosecutrix was all alone in her house, the petitioner came over there and started beating up the prosecutrix, as a result of which her modesty was outraged. Besides lodging the written report, the prosecutrix, upon questioning by the police, stated that the petitioner had entered into her house and given a beating to her, as a result of which her head scarf

(Dupatta) fell down, as a consequence whereof her modesty stood outraged. She further told the police that she raised hue and cry and her cousin siter came over there and rescued her from the clutches of the petitioner.

3. The impugned FIR has been challenged on the grounds that from a perusal of the contents of the same no offence is made out against the petitioner. It has been further contended that the prosecutrix and her family is owing a debt to the petitioner and it is because of this reason that she has lodged a false FIR against him. It has also been contended that during investigation, more offences have been incorporated against the petitioner on the basis of the improvements made by the prosecutrix in her statement recorded before the Magistrate, which shows that whole case is false and frivolous.

4. The respondent-State has filed its reply to the petition, in which it has been stated that after registration of the FIR, the investigation of the case was set into motion and the statement of the prosecutrix under Section 164 of the Cr. P. C was recorded. According to the official respondent, the prosecutrix/victim was born on 17.05.2007, as such, she is a minor. It has been submitted that after investigation of the case, offences under Section 452, 354-A, 376/511, 506 IPC and Section 8 of the POCSO Act have been found established against the petitioner.

5. The prosecutrix has been impleaded as respondent No.2 to the present petition in terms of order dated 08.07.2024 but she has not filed any reply to the petition.

6. I have heard learned counsel for the partis and perused record of the case including the Case Diary.

7. In the report lodged by the informant in presence of the prosecutrix, the only allegation against the petitioner is that he has trespassed into the house of the victim and thereafter given a beating to her, which resulted in outraging of her modesty. However, in her statement recorded under Section 164 of Cr. P. C, which is available in the Case Diary produced by the Investigating Officer, who is present in the Court, she has made a detailed narration of the alleged incident. In her said statement, she has deposed that the petitioner kissed her lips, hugged her and pressed her bosoms. She has also stated that the petitioner tried to forcibly commit rape upon her but she succeeded in saving herself from the clutches of the petitioner.

8. The aforesaid allegations do not find mention in the initial written report or even in the oral statement made by the victim before the police at the time of lodging of the FIR. The effect of this improvement that has been made by the victim while making her statement under Section 164 of the Cr. P. C before the learned Magistrate cannot be gone into by this Court at this stage. It is for the Investigating Officer to look into this aspect of the matter and frame an opinion on the basis of other evidence available on record. While framing its opinion in the matter, the Investigating Agency is also required to take into consideration the settled legal position that an FIR is not the encyclopaedia of a crime and it is not necessary that FIR should contain all the meticulous details of

the crime. All these aspects are to be looked into by the Investigating Officer before reaching a particular conclusion.

9. At this stage one thing is clear that a written report has been lodged against the petitioner alleging commission of cognizable offences against him. The prosecutrix has not only supported the allegations made in the impugned FIR but she has even gone on to make more serious allegations against the petitioner in her statement under Section 164 of the Cr. P. C. Thus, it is not a case where the allegations made in the impugned FIR and the material collected by the Investigating Agency during investigation of the case do not make out a cognizable offence against the petitioner. Therefore, this Court in exercise of its powers under Section 482 of Cr. P. C would not venture to quash the criminal proceedings initiated against the petitioner on the basis of the impugned FIR.

10. In view of what has been discussed above, the petition lacks merit and is dismissed accordingly. The official respondents are directed to conclude the investigation of the case and proceed further in the matter in accordance with law.

11. Before parting, it would be pertinent to mention here that the petitioner has been granted anticipatory bail in the impugned FIR by this Court in terms of order dated 31.05.2021. The petitioner would continue to abide by the conditions of the bail till the conclusion of the investigation/trial and it shall be open to the prosecution to seek its

cancelation in case the petitioner violates any of the conditions of the bail, by filing appropriate application before the trial court.

12. The Case Diary be returned to learned counsel for the official respondent.

(Sanjay Dhar)
Judge

Srinagar
22.07.2024
"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No

HIGH COURT
JAMMU & KASHMIR AND LADAKH

Mohammad Altaf Bhat
I attest to the accuracy and
authenticity of this document

25.07.2024 16:30