S.No.129

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Bail App No.109/2025
c/w
CRM(M) No.349/2025

Mohd. Ayub .....Petitioner(s)

Through:-Mr. Aseem Sawhney, Advocate

V/s

Union Territory of J&K ...Respondent(s)

Through:-Mr. Bhanu Jasrotia, GA

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

ORDER

25.04.2025

1. The petitioner has sought bail in anticipation of his arrest in case FIR No.5/2025 for offences under Sections 333, 64, 62, 76 and 115(2) of BNS registered at Police Station, Nowshera. The petitioner has also challenged the chargesheet emanating from the aforesaid FIR by invoking power of this Court under Section 528 of BNSS.

2. It appears that the aforesaid FIR has been lodged against the petitioner and co-accused by the prosecutrix, who happens to be the daughter-in-law of the petitioner. In the FIR it has been alleged that on 24.11.2024, the petitioner entered into the house of the prosecutrix with an intention to outrage her modesty and forced her for sexual intercourse. It has been further alleged that the petitioner forcibly pressed her bosom and took her in his arms. When, she resisted, the petitioner threatened that he can do anything to fulfill his demand. It is also alleged that the co-accused, who happens to be

the mother-in-law of the prosecutrix, also came over there and both the petitioner as well as his wife assaulted the prosecutrix and tore up her clothes.

3. The aforesaid FIR culminated into filing of the challan against the petitioner and co-accused for offences under Sections 333, 64, 76, 115(2) and 352 of BNS. It seems that the challan was produced against the accused in their absence, as according to the Investigating Agency, their whereabouts could not be traced. It also appears that the petitioner and co-accused approached the learned Principal Sessions Judge, Rajouri for grant of bail in anticipation of their arrest. However, vide order dated 07.04.2025 passed by the learned Principal Sessions Judge, Rajouri, bail in anticipation of arrest was granted to the co-accused i.e. wife of the petitioner, whereas the similar relief was declined to the petitioner, which prompted him to approach this Court by way of present petition.

4. Learned counsel for the petitioner has contended that the petitioner is aged 74 years and at this age it is improbable that he would have launch sexual assault upon none else than his own daughter-in-law. It has been submitted that the fact of the matter is that the husband of the prosecutrix, who happens to be the son of the petitioner, has passed away, whereafter the prosecutrix has re-married and she at the behest of her husband wants to have a share in the property of the petitioner. The learned counsel has submitted that already there is a civil litigation going on between the parties and the petitioner has filed a Suit for permanent prohibitory injunction against the

prosecutrix and her husband before the Court of Sub-Judge, Nowshera in order to protect his possession over the land owned by him in village Hanjana ThakraTehsil Nowshera District Rajouri regarding which the prosecutrix and her husband are making persistent attempts make forcible entry. Copy of the interim order passed by the learned Sub Judge, Nowshera has also been placed on record.

5. Learned counsel for the petitioner has also contended that it is improbable that the petitioner would sexually assault his daughter-in-law, that too, in presence of his wife. He has further submitted that the prosecutrix while making her statement under Section 164-A Cr.P.C., during investigation of the case, has introduced a new story by stating that after the death of her husband the petitioner had committed forcible sexual assault upon her on two occasions, which allegation does not find mention in the FIR lodged by her, which was registered on the directions of the learned Magistrate.

6. On the basis of aforesaid facts, learned counsel for the petitioner has contended that the impugned criminal prosecution launched by the prosecutrix against the petitioner is nothing but a device to wreak vengeance upon the petitioner and his wife so as to coerce them to set apart a share of their property in her favour.

7. Having heard learned counsel for the petitioner and having perused the documents place on record, it appears that there is prima facie merit in the submissions made by the learned counsel for the

petitioner, as such, a case of grant of interim indulgence is made out in favour of the petitioner.

7. Issue notice of both the petitions to the respondent through Mr. Bhanu Jasrotia, GA, who shall file response within six weeks. Xerox copy of the trial Court record be sent for. Notice be sent to the prosecutrix (respondent No.4) through the concerned SHO.

8. In the meanwhile, it is directed that in the event of arrest of the petitioner in the aforesaid FIR, he shall be admitted to ad-interim bail in anticipation of his arrest, subject to the following conditions:

   i) He shall furnish the bail bond with one surety in amount of Rs.50,000/- to the satisfaction of the Judicial Magistrate 1st Class, Sub Judge, Nowshera.

   ii) That he shall appear before the Judicial Magistrate 1st Class, Nowshera on 15.05.2025, the date fixed in the case and shall continue to appear before the Court to which the charge-sheet may be committed on each and every date of hearing.

   iii) That he shall not tamper with the prosecution witnesses.

   iv) The petitioner shall not leave the territorial jurisdiction of the UT of J&K except with permission of the committal Court/trial Court.

9. List these petitions on 15th July, 2025.

(**Sanjay Dhar**)
Judge

Jammu
25.04.2025
Vinod.

Vinod Kumar
2025.04.28 12:55
I attest to the accuracy and
integrity of this document