

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

**Bail App No.104/2024**

**UMAR BASHIR KHAN**

**... PETITIONER(S)**

*Through: - Mr. Syed Irfan Masoodi, Advocate.*

Vs.

**UT OF J&K & OTHERS**

**...RESPONDENT(S)**

*Through: - Mr. Mubashir Majid Malik, Dy. AG.*

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

**ORDER(ORAL)**

**24.12.2024**

**1)** The petitioner has sought bail in a case arising out of FIR No.112/2018 for offences under Section 451, 376/511, 354 and 506 RPC registered with Police Station, Aishmuqam.

**2)** The prosecution case discernible from the challan is that on 07.12.2018, the prosecutrix lodged a report with the police after getting it endorsed from the jurisdictional Magistrate, alleging therein that during the intervening night of 5<sup>th</sup>/6<sup>th</sup> December, 2018, the petitioner trespassed into her house, whereafter he gave a thrashing to her. It was further alleged that the petitioner tried to commit sexual assault upon her but she raised a hue and cry. It was also alleged that the prosecutrix was dragged by the petitioner by her hair and she was given life threats by him. On the basis of aforesaid report, the police registered FIR for

offences under Section 451, 376/511, 354 and 506 of RPC and started investigation of the case.

3) During investigation of the case, the statement of the prosecutrix under Section 164 of the Cr. P. C was recorded before the Magistrate, in which she repeated and reiterated the allegations which she had leveled in her report. After investigation of the case, offences under Section 451, 376/511, 354 and 506 of RPC were found established against petitioner and the chargesheet was laid before the trial court on 29.11.2021.

4) It seems that at the time of presentation of aforesaid charge sheet, the petitioner was in custody in connection with FIR No.69/2019 for offences under Section 8/20, 27A of the NDPS Act of Police Station, Gangyal Jammu. After the petitioner was released on bail in FIR No.69/2019 of P/S Gangyal, Jammu, he moved an application for grant of bail before the trial court on 12.07.2024. The said application came to be rejected by the trial court in terms of order dated 02.09.2024. It is pertinent to mention here that the charges for offences under Section 345, 376/511, 506 RPC came to be framed against the petitioner on 10.07.2024.

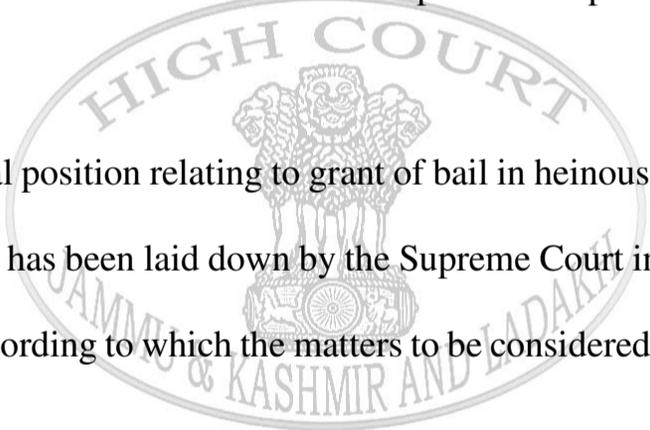
5) The petitioner has sought bail on the grounds that the trial of the case has already progressed and the statement of the prosecutrix has been recorded wherein she has resiled from the version of occurrence which she had given while making her statement under Section 164 of the Cr. P. C. It has been further contended that the learned trial court has, in a most mechanical manner, rejected the bail application of the petitioner

by assuming as if the petitioner was facing the charge of rape and not one of attempt to rape.

6) The reply to the bail application has been filed by the respondents wherein it has been contended that the petitioner has committed a grave offence which is against society, as such, he cannot be enlarged on bail. It has been further contended that if the petitioner is enlarged on bail, there is every chance that he may tamper with prosecution witnesses. It has also been contended that in the previous past, the petitioner has been involved in offences under NDPS Act, as such, due to his past criminal antecedents, he does not deserve to be enlarged on bail.

7) I have heard learned counsel for the parties and perused record of the case.

8) The legal position relating to grant of bail in heinous offences like murder or rape has been laid down by the Supreme Court in its catena of judgments, according to which the matters to be considered in such cases are:

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- (i) *Whether there is any prima facie or reasonable ground to believe that the accused has committed offence;*
  - (ii) *Nature and gravity of the charge;*
  - (iii) *Severity of punishment in the event of conviction;*
  - (iv) *Danger of the accused absconding or fleeing after release on bail;*
  - (v) *character, behaviour, means, position and standing of the accused;*
  - (vi) *likelihood of the offence being repeated;*
  - (vii) *reasonable apprehension of the witnesses being tampered with; and*
  - (viii) *danger of justice being thwarted by grant of bail.*

**9)** Adverting to the facts of the instant case, as already stated hereinbefore, the charge against the petitioner is that he has attempted to commit rape upon the prosecutrix during the dead of night by trespassing into her house. The charge sheet against the petitioner has been laid before the trial court in the year 2021 and charges against him have been framed on 10.07.2024. A perusal of the trial court record reveals that the statement of the prosecutrix has been recorded on 14.10.2024, in which she has categorically narrated that the petitioner has only thrashed her and he has never tried to commit rape upon her. In fact, in her cross-examination, she has stated that there is a family dispute going on between family of the petitioner and family of the prosecutrix, which resulted in exchange of abuses and nothing more happened on the day of occurrence. In the face of this statement of the prosecutrix, prima facie, it appears that there are reasonable grounds to believe that the petitioner has not committed the offence of attempt to rape against the prosecutrix. At best, the petitioner may be involved in the offence of criminal trespass which is not heinous in nature.

**10)** There is yet another aspect of the matter, which is required to be highlighted. The learned trial court, while dismissing the bail application of the petitioner vide its order dated 02.09.2024, has observed that it is a case of sexual intercourse having been committed by the petitioner upon the prosecutrix on the false promise of marriage. It would be apt to reproduce the relevant extracts of the order dated 02.09.2024 passed by the learned trial court, while declining to enlarge the petitioner on bail. The same are reproduced as under:

*“6. Even from the statement of the prosecutrix recorded in the court, it transpires that the accused from the very beginning ellured the prosecutrix. On the basis of promise of marriage the accused time and again sexually exploited the prosecutrix. When the sexual lust of the accused from the prosecutrix was fulfilled, he avoided to perform marriage with the prosecutrix. In such like situation, a genuine inference can be drawn that the accused from the very beginning of the relationship with the prosecutrix was not honest and he had maintained the relationship with the prosecutrix only for the purpose of satisfying his sexual lust.*

*7. From the circumstances appeared on going through the statement of the prosecutrix, it could conveniently be gathered that the intention of the accused from the very beginning was not honest and he was exploiting the woman ship of the prosecutrix just to fulfill his sexual lust. If at all in such process, the consent has been given by the prosecutrix, it falls within the purview of Section 90 RPC as the consent was given under misconception of fact that the accused is intending to marry the prosecutrix.....”*

**11)** From a perusal of the afore-quoted observations of the trial court and, in fact, from a perusal of the order passed by the trial court on 02.09.2024 as a whole, it appears that the said court has decided the bail application of the petitioner on the basis of facts of some other case. This clearly reflects absolute non-application of mind and casual approach on the part of the trial court. It is unimaginable that an officer of the level of a Sessions Judge would approach the bail application of a person, who is in incarceration, in such a casual manner.

**12)** While considering the bail application of a person who is in custody, a Court is expected to be alive to the fact that it is dealing with the life and liberty of an individual. Even a single day’s delay in grant of bail to a person who is otherwise entitled to it amounts to violation of his

fundamental right to life and liberty. In the present case, had the learned trial court taken pains to go through the contents of the challan filed against the petitioner and the charge framed against him by the same very trial court, perhaps the petitioner would have been saved from the agony of languishing in jail for all these months and also from approaching the High Court by way of the present application. The manner in which the learned trial court has decided the bail application of the petitioner leaves much to be desired.

**13)** For the foregoing reasons, while the petitioner is admitted to bail subject to furnishing bail bond with one surety in the amount of Rs.25,000/ each to the satisfaction of the trial court and subject to any other conditions that may be imposed upon him by the trial court, it is impressed upon the criminal courts under the jurisdiction of the High Court of Jammu & Kashmir and Ladakh to remain sensitive and careful while dealing with bail applications and avoid the copy paste syndrome which, of late has crept in the functioning of the courts.

**14)** The bail application shall stand **disposed** of.

**15)** A copy of this order be sent to the trial court for information.

**(SANJAYDHAR)  
JUDGE**

**Srinagar,  
24.12.2024  
"Bhat Altaf-Secy"**

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