

**Supplementary list
(Video Conference)**

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

**CrlR 4/2020
CrlM no. 248/2020**

Manzoor Ahmad Bhat & Anr

....Petitioners..

Through: Mr Shuja-ul-Haq, Advocate

vs.

Union Territory of JK and anr.

**Through: Mr B. A. Dar, Sr. AAG
Mr Nayeem Ahmad, Advocate**

CORAM

Hon'ble Mr Justice Ali Mohammad Magrey, Judge

ORDER

While Mr Shuja-ul-Haq, learned counsel for the petitioner, appeared through video conference from the court room, Mr B. A. Dar, learned Sr. AAG, appeared via the same mode from his office.

The present criminal revision petition is directed against the order dated 16th May, 2020, for short impugned order, passed by the learned Additional Sessions Judge, Pulwama (Fast Track Court for trial of rape cases), for short trial court, whereby the application for grant of bail of the petitioner has been rejected.

The challenge to the impugned order is made *inter alia* on the ground that the trial court has erred in law by not considering the applicability of legal issues involved in an application filed by the petitioners under section 167 Cr.P.C.

Alongside the revision petition, the petitioners have also filed application seeking stay to the operation of the impugned order and grant of bail.

On appearance Mr B. A. Dar, learned Sr. AAG, was granted time to file objections. The matter was taken up for consideration on 5th June, 2020 also but objections were not filed.

Heard learned counsel for the parties.

Mr Shuja-ul-Haq, learned counsel for the petitioner submitted that though the prosecution has filed the challan within the statutory period but the same was filed before the court who did not have the jurisdiction. It is submitted, however, the same does not amount to any illegality as the challan on return has been filed before the competent court of jurisdiction, therefore, the time taken in filing the challan before the competent court of jurisdiction is not to be excluded but computed for the purposes of counting the period of filing the challan which makes the petitioners the beneficiaries of 'default bail' after the expiry of 90 days of filing of challan.

Mr B. A. Dar, learned Sr. AAG, submitted that the matter is very serious and the accused/ petitioners are involved in a heinous crime which is not against an individual but against the society as a whole. He submitted that petitioners do not deserve any leniency, therefore, the bail application be rejected.

Considered the submissions made.

In terms of order dated 29th May, 2020, this court, while issuing notice to the other side, had directed the Additional Sessions Judge, Pulwama, to record the statement of the prosecutrix and take further course of action.

In compliance to the direction the trial court, has recorded the statement of the prosecutrix and submitted the same in the sealed cover. The same is taken on record.

The prosecutrix/ respondent no. 2 has resiled from her earlier statement allegedly recorded before the police under section 161 of the Cr. P. C. and 164-A before the Judicial Magistrate 1st Class. She has stated in her statement that the earlier statement was made by her under pressure. While so deposing she has not supported the case of the prosecution vis-à-vis commission of offence by the petitioners/ accused punishable in terms of Sections 109, 506 and 376 of the RPC.

True it is that the offence alleged against the petitioners/ accused is heinous in nature and it gets graver when the same is alleged by a daughter against her own father and/ or by a sister against her brother as is the present case. The court, however, without getting influenced by the nature of the allegations and the relations between the parties has to bear in mind the entitlement in law of the accused/ petitioners to the grant or otherwise of the bail.

The court is neither evaluating the evidence collected by the prosecution in support of its case nor ignoring the same by any stretch of imagination. The principles required to be applied in these cases are thrashed by the Hon'ble Supreme Court in case titled Gurbaksh Singh Sibbia v. State of Punjab, reported as 1980 AIR, 1632.

Presently the court is focusing only on entitlement of the accused/ petitioners for grant or otherwise of the interim bail in light of the fact that the prosecutrix has not at all supported the allegations, forming the very basis of prosecution case against the petitioners/ accused, in her statement recorded by the learned Additional Sessions Judge, Pulwama, on 6th June, 2020.

The objection of Mr B. A. Dar, learned Sr. AAG, that the prosecutrix has been won over and influenced by the accused, therefore, she has resiled from her statement made in terms of section 161 and 164-A of the Cr. P. C.

The objection made by the learned Sr. AAG, may hold good for launching prosecution against the prosecutrix for having made a wrong statement before the Police or a Magistrate, but that cannot affect the entitlement of the petitioners/ accused for grant of bail.

Prima facie the court has come to the conclusion that the statement so made by the prosecutrix/ respondent no. 2 before the learned Additional Sessions Judge, Pulwama, leaves no scope for rejecting the bail plea of the petitioners/ accused.

It is made clear that the court has not recorded any finding or made any observations about the merit of the case pending before the trial court,

and the trial court shall, without getting overawed by any of the observations, deal with the matter in accordance with law.

In the above background, the petitioner/ accused are admitted to interim bail on the following terms and conditions:

- a) That the accused shall furnish surety bond in the amount of Rs. 50,000/- to the satisfaction of Registrar Judicial and a personal bond of like amount to the satisfaction of Superintendent, District Jail, Anantnag.
- b) That the accused shall not leave the territorial limits of this court without proper permission.
- c) That the accused shall not influence or win over the prosecution witnesses.
- d) That the accused shall remain available as and when called by the trial court.

List the main matter on 30th July, 2020.

Registry shall send a copy of this order to Mr B. A. Dar, learned Sr. AAG, through e-mail and also furnish one to the Superintendent concerned through the same mode. Copy of the order be also furnished to the trial court.

(Ali Mohammad Magrey)
Judge

Srinagar
08.06.2020
Amjad lone PS