

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

EMG-B.A. No. 14-A/2020

Zoya Farooq Bhat.

...Petitioner(s)

Through: Mr Umer Mir, Advocate.

vs

Union Territory of JK & Ors.

...Respondent(s)

Through: Mr Asif Maqbool, Dy. AG.

CORAM:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

ORDER

18.05.2020

In the instant application, accused/applicant is seeking bail in terms of section 439 of CrPC in case FIR No. 179/2019 under sections 363, 376, 109 and 06 of POSCO Act, on the grounds detailed out in the application

Briefly stated, the case of the applicant/accused is that she has been arrested by the police concerned on 20th of November, 2019 from Jammu where she was working from the last five years in Tata motors to earn livelihood for her family as the accused has no father and there is no male member in the family. Thereafter, the accused filed two bail applications before Principal Sessions Judge, Baramulla which came to be rejected by the said court on the ground that the investigation of the case is yet to be completed and since then, the alleged accused is lodged in sub bail Baramulla. It is further stated that the accused thereafter through her mother filed another bail application through Whatsapp before magistrate Baramulla on mobile number 78890364964 on 18th of April, 2020 and the application was forwarded on the same day to the Police Station Pattan through AP for report

and on the same day, the concerned police reported that the challan of the same case has already been produced before Session Judge, Baramulla on 13.02.2020 and the said bail application was then forwarded on 18.04.2020 to Additional District Judge, Sopore, on his Whatsapp No. 9419054541 and the said Hon'ble Judge replied that the bail application cannot be entertained as the challan of the case is pending before the Court of Sessions Judge, Baramulla. It is further averred that the applicant/accused has been implicated by the police in the above titled case without any reason and justification as the police has not investigated the matter properly, as such, an innocent person is languishing in behind the bard from 20th of November, 2019 till date without any fault. It is further stated that the applicant/accused is innocent and cannot be deprived of the right to liberty to bail. The police have already completed the investigation and challan has been produced before the court of competent jurisdiction, as such, the accused is not required for further investigation.

Objections stand filed on behalf of the respondents resisting the grant of bail in favour of the accused, wherein, it is stated that offence committed by the applicant is heinous and has far reaching consequences on the society. It is stated that accused has in connivance with some other persons destroyed the life of a minor girl and as such, she does not deserve grant of bail in her favour.

Besides, Mr Asif, learned Dy. AG submitted that the accused has already suffered rejection of bail at the hands of the trial court on the basis of available record.

Heard learned counsel for the parties.

On consideration of the matter, the Court is of the considered view that the proper course for this case to be adopted is to ask the trial court to reconsider the bail application of the applicant/accused afresh on the material

supporting her contention and the contentions to be raised by the prosecution. While considering the application seeking bail, the trial court shall not be influenced by the observations made or findings records in the order of rejection, which in other words mean, that the bail application be considered afresh by treating the rejection order as non-existent by adhering to all the provisions of law. The parties are directed to appear before the trial court on Wednesday, the 20th of May, 2020, with liberty to the applicant/accused to supplement the bail application on additional grounds, which application is directed to be decided afresh as expeditiously as possible and not later than one week thereafter.

With the aforesaid observations, the bail application shall stand *disposed* of.

At this stage, taking note of the averments made by the learned counsel for the accused that an application for grant of bail is already pending before the learned trial court which is not being entertained in view of present lockdown, it is provided that if any such application is pending before the trial court, then in such eventuality the accused/applicant need not file the fresh application for bail and that the said pending application shall be considered and decided as observed hereinabove.

Registry to furnish copy of this to the appearing counsel for the parties and one to be sent to the trial court, through email services.

(Ali Mohammad Magrey)
Judge.

SRINAGAR;
18.05.2020
"Hamid"