

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

Through Video Conferencing

EMG-Crl(M) 46-A /2020in bail app no. 44-A/2020

Abid Najar

.....Petitioner

Through: Sheikh Manzoor, adv.

V/s

Station House Officer(SHO) P/S Nowgam, Budgam.

.....Respondent(s)

Through: Mr. B.A Dar, Sr. AAG.

CORAM:

HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE

*Whether approved for reporting? **Yes/NO***

Order

20.05.2020

Heard learned counsel for petitioner through video conferencing.

This application is filed by the learned counsel for the applicant-accused seeking grant of bail in FIR no.01/2018 of Police Station Nowgam u/s 306, 304-B, 498-A RPC.

Mr. Sheikh Manzoor learned appearing counsel for the applicant-accused submits that on completion of investigation police submitted a final report before the Court of Principal Sessions Judge, Budgam.

It is submitted that in terms of order dated 10.03.2020, the charge stands framed against the applicant-accused and the prosecution has been asked to lead evidence. Pending such trial, the bail application has been rejected on the objection of the prosecution that the trial court lack jurisdiction.

Mr. Sheikh Manzoor learned appearing counsel for applicant-accused has vehemently argued and submitted that if the court has no jurisdiction to grant the bail, then how can the trial court is proceed in the matter..

Heard learned counsel for the applicant-accused and considered the matter. Perused the record available on the file.

Without going to the merits of the case, the Court is of the considered view that the rejection of the bail application on the ground taken therein, is unwarranted, in the fact situation of the case.

The trial court is proceeding the trial, therefore, to grant or reject bail on the objection of the prosecution has no relevance and substance.

With this background, the order passed by learned Principal Sessions Judge, Budgam dated 27.04.2020 is set aside with direction to consider the bail application afresh notwithstanding the objection of prosecution on the jurisdiction.

The parties shall appear before the Court below on 26th May, 2020. The Registry shall send a copy of this order to Principal Sessions Judge Budam through e-mail today itself copy whereof shall be conveyed to learned counsel for the parties to e-mail.

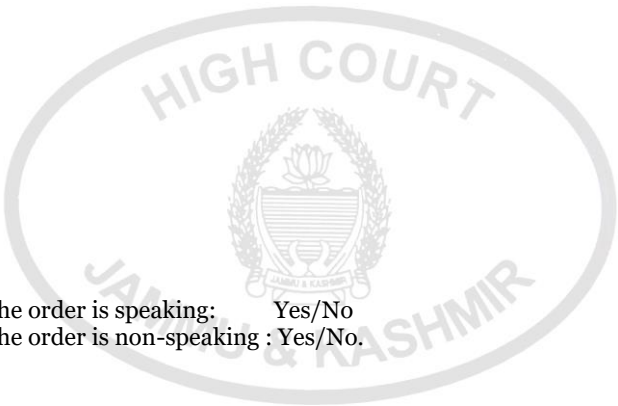
Disposed of.

(Ali Mohammad Magrey)

Judge

Srinagar
20.05.2020
ayaz

- i. Whether the order is speaking: Yes/No
- ii. Whether the order is non-speaking : Yes/No.



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

Through Video Conferencing

EMG-Crl(M) 43-A /2020 in bail app no. 42-A/2020

Aabid Ah. Shah

.....Petitioner

Through: Sheikh Ishfaq, adv.

V/s

UT of J&K and ors.

.....Respondent(s)

Through: Mr. B.A Dar, Sr. AAG.

CORAM:

HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE

*Whether approved for reporting? **Yes/NO***

Order

20.05.2020

Heard learned counsel for parties through video conferencing.

This application is filed by the learned counsel for the applicant-accused seeking grant of bail in FIR no.147/2019 of Police Station Magam u/s 376 D, 366 344, 34 IPC.

Learned counsel for the applicant-accused submits that on completion of the investigation the final report stands filed before the Principal District Judge Budgam and the charge stands framed against the accused on 3rd March 2020 with direction to prosecution to lead evidence.

Pending trial the applicant-accused had filed bail application before the trial court which stands rejected with reference to the offence being heinous.

It is submitted that the trial court has not considered the submission of the applicant made in the application having reference to the statement of the prosecutrix who claims to be legally wedded wife of the applicant-accused.

Learned counsel for the applicant-accused submits that the prosecutrix is available in his office where from she made submission by use of video link.

When asked the learned counsel made available the prosecutorix namely Roza Farooq @ Afiya D/o Farooq Ahmad Sheikh R/o Gambora Teshil Beerwa video link who submitted that because of threat and harassment she has made the statement against the applicant-accused. She has further submitted that she volunteered herself to record her statement before the trial court but the same is not possible because of lock-down.

Mr. B.A Dar, Sr. AAG submits that the offence is heinous and there is no scope for grant of bail. It is submitted that pending trial in heinous case is not entitled to bail, cited principal of law case titled "*Shimbhu and another vs. State of Haryana*", reported in (2014) 13 SCC, 318, wherein the Hon'ble Supreme Court has laid down the guide lines.

Heard. Considered the matter.

In view of the submissions made by learned counsel for the applicant-accused and the statement made by proxecutrix Roza Farooq it has become necessary to direct the learned District and Sessions Judge, Budgam to consider the grant of bail in favour of the applicant-accused without getting influenced by the observations and findings made in the order dated 29.04.2020. The Trial court shall also ensure recording of the statement of prosecutrix who will have to appear in the matter on the next date of hearing.

In order to ensure substantial justice between the parties, it has become necessary to dispose of the application with direction to Principal District Judge, Budgam to take up the matter for grant of bail on filing of the application by the applicant-accused on 23rd May 2020.

The prosecutrix shall be given facility to record her statement by use of video conferencing if not possible by allowing her to appear before the Court.

Registry to send copy of this order to the Principal District & Sessions Judge Budgam and copy whereof shall be made to Mr. B.A Dar, Sr. AAG through e-mail.

(Ali Mohammad Magrey)

Judge

Srinagar

20.05.2020

ayaz

- iii. Whether the order is speaking: Yes/No
- iv. Whether the order is non-speaking : Yes/No.

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

Through Video Conferencing

EMG-Crl(M) 49-A /2020 in bail app no. 46-A/2020

Javid Ahmad Wagay

.....Petitioner

Through: Mr. Suja ul Haq adv.

V/s

UT of J&K and ors

.....Respondent(s)

Through: Mr. B.A Dar, Sr. AAG.

CORAM:

HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE

*Whether approved for reporting? **Yes/NO***

Order

20.05.2020

Objections within one week. In the meanwhile, taking into consideration the statement made by Mr. Suja ul Haq, advocate on behalf of the accused that the age of the prosecutrix recorded in the School records of Government High School Furrah, Anantnag is more than 22 years at the time of commission of offence i.e 18.11.2019, therefore, the offence under section 363, IPC and Section 3 POCSO Act is not made out.

Learned counsel further submits that prosecutrix being major and out of her own consent inter-acted with the accused.

Mr. Suja further submits that the applicant-accused had filed application before the trial court for seeking records from Government School Furrah as proof of age of prosecutrix being 22 years but the same has been turned down by the trial court without any justiceable reason.

Before proceeding further it has become necessary to direct SHO Police Station Qazigund, Anantnag to approach the Head Master Govt. High School Furra and to obtain the certificate of date of birth of Shabnam Rashid D/o Abdul Rashid Bhat R/o Furrah Anantnag stated to be admitted in the year 2001 under admission no. 963 of 2001 dated 23rd Nov. 2001.

On approaching the Head Master shall provide the certificate of Date of Birth of the prosecutrix, Shabnam Rashid to the SHO of aforesaid police station, who shall produce the same before this Court through Mr. B.A Dar, Sr. AAG on the next date of hearing.

List on 28th May, 2020.

Registry to provide copy of this order as also copy of petition to Mr. B.A Dar, Sr. AAG by e-mail. Copy whereof shall be furnished to Mr. Shuja ul Haq as well by e-mail.

(Ali Mohammad Magrey)

Judge

Srinagar

20.05.2020

ayaz

- v. Whether the order is speaking: Yes/No
- vi. Whether the order is non-speaking : Yes/No.



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

Through Video Conferencing

EMG-Crl(M) 47-A /2020 inCRM (M) no. 45-A/2020
EMG-Cril (M) 48-A/2020

Mohammad Shafi Rather

.....Petitioner

Through: Mr. Javid Samad, adv.

V/s

UT of J&K and ors

.....Respondent(s)

Through:

CORAM:

HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE

*Whether approved for reporting? **Yes/NO***

Order

20.05.2020

Notice.

Notice in CRM also. In the meanwhile, the pendency of the charge sheet shall not come in the way of petitioner to seek benefits arising out of promotion.

List on 6th July 2020,

(Ali Mohammad Magrey)

Judge

Srinagar

20.05.2020

ayaz

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

Through Video Conferencing

EMG- BA No. 10-A /2020

Mohammad Tajmul Masoodi,

.....Petitioner

Through: Mr. Shety

V/s

UT of J&K and ors

.....Respondent(s)

Through:

CORAM:

HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE

*Whether approved for reporting? **Yes/NO***

Order

20.05.2020

Notice.

Notice in CRM also. In the meanwhile, the pendency of the charge sheet shall not come in the way of petitioner to seek benefits arising out of

(Ali Mohammad Magrey)

Judge

Srinagar

20.05.2020

ayaz

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

Through Video Conferencing

EMG- BA No. 10-A /2020

Mohammad Tajmul Masoodi,

.....Petitioner

Through: Mr. Shakti Gupta, adv.

V/s

UT of J&K and ors

.....Respondent(s)

Through: Mr. B. A Dar, Sr. AAG

CORAM:

HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE

*Whether approved for reporting? **Yes/NO***

Order

20.05.2020

Ten days last opportunity is granted to Mr. Dar, to file objections.

List on 1st June, 2020.

(Ali Mohammad Magrey)

Judge

Srinagar

20.05.2020

ayaz

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

Through Video Conferencing

EMG- Crcm no. 25/2020 MP No. EM4 B.A No.31-A 2020

Ishfaq Ahmad Wani,

.....Petitioner

Through: Mr. I. Sofi, adv.

V/s

UT of J&K and ors

.....Respondent(s)

Through: Mr. B. A Dar, Sr. AAG

CORAM:

HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE

*Whether approved for reporting? **Yes/NO***

Order

20.05.2020

Ten days last opportunity is granted to Mr. Dar, to file objections.

List on 1st June, 2020.

(Ali Mohammad Magrey)

Judge

Srinagar

20.05.2020

ayaz

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

Through Video Conferencing

**EMG- Crcm no. 26-A/2020
EM4 B.A No.32-A 2020**

Khurshid Ahmad Wani

.....Petitioner

Through: Mr. I. Sofi, adv.

V/s

UT of J&K and ors

.....Respondent(s)

Through: Mr. B. A Dar, Sr. AAG

CORAM:

HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE

*Whether approved for reporting? **Yes/NO***

Order

20.05.2020

Ten days last opportunity is granted to Mr. Dar, to file objections.

List on 1st June, 2020.

(Ali Mohammad Magrey)

Judge

Srinagar

20.05.2020

ayaz

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

Through Video Conferencing

**EMG- Crcm no. 27/2020
EM4 B.A No.33-A 2020**

Syaad Ahmad Sheikh

.....Petitioner

Through: Mr. I. Sofi, adv.

V/s

UT of J&K and ors

.....Respondent(s)

Through: Mr. B. A Dar, Sr. AAG

CORAM:

HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE

*Whether approved for reporting? **Yes/NO***

Order

20.05.2020

Ten days last opportunity is granted to Mr. Dar, to file objections.

List on 1st June, 2020.

(Ali Mohammad Magrey)

Judge

Srinagar

20.05.2020

ayaz

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

Through Video Conferencing

**EMG- Crcm no. 30-A/2020
EM4 B.A No.34-A 2020**

Showket Ahmad Parray

.....Petitioner

Through: Mr Umer Rashid Wani, adv.

V/s

UT of J&K and ors

.....Respondent(s)

Through: Mr. B. A Dar, Sr. AAG

CORAM:

HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE

*Whether approved for reporting? **Yes/NO***

Order

20.05.2020

Ten days last opportunity is granted to Mr. Dar, to file objections.

List on 1st June, 2020.

(Ali Mohammad Magrey)

Judge

Srinagar

20.05.2020

ayaz