

**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 3<sup>rd</sup> 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 23<sup>rd</sup> 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.