

Suppl. List VC

Sr. No. 04

IN THE HIGH COURT OF JAMMU AND KASHMIR AT
SRINAGAR

EMG Bail Appl. No. 46-A/2020

EMG CrI (M) No. 49-A/2020

Javid Ahmad Wagay

... Petitioner(s)

Through: - Mr. Shuja-ul-Haq Tantray,
Advocate (On video conference
from his residence)

V/s

UT of J&K and Ors.

....Respondents(s)

Through: - Mr. B. A. Dar, Sr. AAG
Ph. No. 9906544708 (on
video conference from his
office)

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge

ORDER

28.05.2020

By the medium of this application filed by Javid Ahmad Wagay S/o Abdul Hamid Wagay R/o Khargund, Chowgam Qazigund Anantnag, Kashmir, through Shabnum Rashid D/o Abdul Rashid Bhat R/o Furras Anantnag, Kashmir, seeking direction for admitting the petitioner on bail in case FIR No. 283/2019 under Section 363, 376 IPC and Section 3 POCSO Act, titled State versus Javid Ahmad Wagay, pending before the Court of Principal District Judge, Anantnag.

Before advertng the grounds made in the petition for the relief claimed, it shall be profitable to notice few relevant facts from the application:-

- i. Petitioner Javid Ahmad Wagay stands arrested on 19.11.2019 in case FIR No. 283/2019 under Section 363, 376 IPC and Section 3 POCSO Act, titled State versus Javid Ahmad Wagay and the statement of the prosecutrix, as stated was recorded under Section 164-A Cr.PC before the Court of District Mobile Magistrate, Anantnag on 06.12.2019. It is stated that the statement of the prosecutrix discloses her age as 20 years and denied all the allegations against the accused of having kidnaped her for illicit relations, but supported the accused of being in love with him for the last one and a half years at the time of the occurrence of the incident. It is further stated that the families of the prosecutrix and the accused on noticing the affairs of the petitioner and the prosecutrix initiated the process for resolving the matter amicably by allowing both petitioner and prosecutrix to marry each other, but the father of the prosecutrix, as stated having turned round and filed a false and fabricated case against the accused.
- ii. Without considering the impact of the statement of the prosecutrix and without ascertaining the actual date of birth of the prosecutrix, the respondent No. 2 as stated have registered a false case under Section 3 POCSO and Section 363. It is stated that the prosecutrix has volunteered to file the present application, seeking bail of the accused, which shows that there is no strength with the prosecution to establish the allegations and contents of FIR No. 283/2019 against the accused. The petitioner has supplied the information of the prosecutrix being of more than 20 years of age on the strength of her being

admitted in the then Government High School, Furrah in the year 2001 under admission No. 963/2001, wherein the age of the prosecutrix Shabnum Rashid was reflected as 27.05.1997. It is stated that the prosecutrix studied upto class 3rd in the said School and thereafter admitted in the private School, where her date of birth has been wrongly reflected.

On the previous hearing this Court while hearing learned counsel for the parties, Mr. Shuja-ul-Haq, learned appearing counsel for the petitioner made a request to allow the prosecutrix who has filed this petition to make submissions in the support of the contentions made in the application.

Since hearing in this petition is by virtual mode, therefore, in order to avoid any confusion, the prosecutrix though heard but no weightage can be given to her statement as there is no physical appearance of the prosecutrix before the Court.

Mr. B. A. Dar, learned Sr. AAG, submits that he has received objections as also the communication from the Principal Government Higher Secondary School, Furra, mentioning therein that there is no incumbent under the name of Shabnum Rashid D/o Abdul Rashid Bhat R/o Furrah Anantnag, Kashmir, admitted under Admission No. 963/2001, which as per him suggests that the claim of the petitioner has no substance.

Mr. Shuja-ul-Haq, learned appearing counsel for the petitioner seeks permission to transmit the copy of the date of birth certificate of the prosecutrix issued by Government Boys Primary School, Grece, Furrah, vide Ref No. BPS/G/F/241 dated 25.05.2020. Permission granted. Transmission was downloaded and the hard copy of the certificate is taken on record.

Heard learned counsel for the parties, perused the records and considered the matter.

Whatever has been stated in the application has remained unrebutted with particular reference of the statement of the prosecutrix and also the prosecutrix denying all the allegations levelled against the petitioner/accused.

Admittedly the accused is in the jail for the last about seven months and the prosecution has already submitted a final report before the competent Court of law, which is pending trial.

Additionally Court cannot ignore the statement of the prosecutrix made under Section 164-A Cr.PC and the claim made by the prosecutrix in the petition, which shall be subject to further stand to be taken by the respondents.

In the above background, the Court while granting further time to the respondents to file objections and keeping in view the averment made by the prosecutrix in the application, it is thought proper to pass the following order:-

- a) Since the prosecutrix claims to be major of the age of more than 18 years at the time of occurrence of the commission of offence by supplying the information that she was admitted in the then Government High School, Furrah in the year 2001 under admission No. 963/2001, wherein the age of the prosecutrix Shabnum Rashid was reflected as 27.05.1997 D/o Abdul Rashid Bhat R/o Furrah Anantnag, Kashmir, but the respondents having denied orally any such admission, therefore, it is thought proper to direct Principal Sessions Judge, Anantnag to conduct enquiry regarding the age of the prosecutrix on the strength of the evidence adduced by the parties. Needful shall be done within two weeks

and report submitted to this Court in a sealed cover before the next date of hearing.

b) Pending enquiry, the accused namely Javid Ahmad Wagay S/o Abdul Hamid Wagay R/o Khargund, Chowgam Qazigund Anantnag, Kashmir, arrested on 19.11.2019 in case FIR No. 283/2019 under Section 363, 376 IPC and Section 3 POCSO Act, is released on interim bail, which shall be subject to following conditions:-

- (i) He shall not try to influence the listed witnesses and shall maintain his conduct to be surveillanced by the Police concerned.
- (ii) He shall not leave the limits of the jurisdiction of this Court without permission.
- (iii) He shall furnish bail bond in the amount of Rs. 50,000/- with like amount of surety to the satisfaction of the Superintendent District Jail, Anantnag and on furnishing such he shall be released.
- (iv) He shall remain available before the trial Court as and when the case is taken up by the trial Court.
- (v) Any violation of the conditions of the bail shall form the basis for rejections of the bail.

List on 29th June, 2020.

Registry to send copy of this order to learned counsel for the parties through e-mail, as also to learned Principal Sessions Judge, Anantnag, for compliance.

(Ali Mohammad Magrey)
Judge

Srinagar
28.05.2020
Mohammad Yasin Dar