

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(Through Virtual Mode)

Reserved on : 29.04.2020
Pronounced on: 14.05.2020

IA No. 02/2018
CRA No. 49/2016
IA No. 01/2016

Jarnail Singh ...Appellant(s)

Through :- Mr. O.P Thakur, Advocate.

v/s

State of J&K ...Respondent(s)

Through :- Mr. Rajesh Thappa, Dy. A. G.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

ORDER

IA No. 02/2018 :

1. The appellant-Jarnail Singh, convicted for offence under Section 376 RPC and sentenced to undergo rigorous imprisonment for a period of seven years and fine to the tune of Rs. 25,000/-, seeks bail on the ground that he has undergone sentence for the period of two years and nine and a half months and further that there is no possibility of hearing of the criminal appeal in near future.
2. The objections to the application have not been filed. However, it is submitted during the course of arguments by the learned Deputy Advocate General, Mr. Rajesh Thappa that the appellant has been convicted in a heinous offence and there is no possibility of the appellant succeeding in the appeal. The victim in the case was minor and no leniency can be shown to the appellant only for the reason that he has undergone part of the awarded sentence.

3. The learned counsel for the appellant has argued that by now the appellant has already undergone more than half of the awarded sentence and is otherwise entitled to bail in terms of Section 436-A Cr.P.C as now applicable in the Union Territory of Jammu and Kashmir. The learned counsel has also cited judgments in support of his arguments.
4. The Court directed the respondents to file the nominal roll of the appellant and the same has been filed. The nominal roll filed by Deputy Superintendent, District Jail, Jammu, reveals that the appellant has undergone total sentence of four years and twenty six days as on 07.03.2020. Admittedly, the appellant has undergone more than a half of the sentence as on date. The main plank of argument of the learned counsel for the appellant is that the provisions of the Code of Criminal Procedure provide that where a person has during the period of investigation, inquiry or trial under the Code has undergone detention for a period extended up to one half of the maximum period of imprisonment specified for that offence, he shall be released on his personal bond with or without sureties. However, it may be noticed that the said provision is not in absolute terms and exception has been carved out in the said provision. It is provided that the detention can be continued for reasons to be recorded even if the person has undergone the detention for a period longer than one-half of the sentence. No doubt, the appeal is continuation of the trial. The right to bail being not absolute it is still required to be seen if the bail is to be granted in the present case. Without going into the merits of the case, it is suffice to mention that the appellant was a teacher in a school and the victim was the student of the same school and as per the allegations which stood

- proved later on during trial, the appellant asked the student victim to take the books from his house after the school time as the books are to be supplied to the students. The appellant, however, committed rape upon the prosecutrix when she visited the house of the appellant. The victim was minor aged about 13/14 years at the time of occurrence. The relationship between the victim and the appellant was sacrosanct and the same was shattered by the appellant and this aspect cannot be ignored. The circumstances of the case do not *per se* make out a case for grant of bail to the appellant though the appellant has undergone one-half of the sentence awarded by the trial court.
5. The learned counsel for the appellant has cited case MP No.01/2017 in Cr. Appeal No. 53/2014 titled 'Jeet Raj v. State' and MP No. 1/2016 in Cr. Appeal No. 56/2012 titled 'Altaf Ahmed Chandel v. State through CBI' wherein this High Court granted bail for commission of offence under Section 376 RPC as the appellants had already served more than half of the sentence awarded and also for the reason that the appeals were not likely to be heard expeditiously. The cases cited by the learned counsel for the appellant do not spell out the circumstances of the cases which guided this court to grant bail to the appellants. Each case has its own peculiarities which are required to be seen.
6. The learned counsel for the appellant has also made oral submission that the appellant be granted bail as he is required to look after his wife and daughter. The prayer on this ground is declined as it does not outweigh the other circumstance mentioned in the order denying the bail to the appellant.

7. The delay in disposal of the appeal can be one of the factors for granting bail to the convict but that cannot be the sole criteria for granting the same if the circumstances do not call for the same. At the cost of repetition, the circumstances mentioned above are sufficient to not grant bail to the appellant.
8. In the considered opinion of the Court, the application does not deserve to be allowed and is rejected.
9. It is made clear that the observations made by the Court do not in any manner reflect upon the merits of the case and are confined to the disposal of the application.
10. As the appeal is pending disposal for the last about four years, the same is required to be heard on merits at the earliest, more so, when the application for grant of bail has also been dismissed.
11. Registry shall fix the case for final hearing on 09.06.2020.

(PUNEET GUPTA)
JUDGE

Jammu
14.05.2020
Pawan Chopra

Whether the order is speaking? Yes/No
Whether the order is reportable? Yes/No