

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

(Through Virtual Mode)

Reserved on : 28.05.2020

Pronounced on: 03.06.2020

EMG-Bail App No. 17/2020

Paltu

...Applicant

Through :- Mr. Jagpaal Singh, Advocate

v/s

UT of Jammu and Kashmir

...Non-applicant

Through :- Mr. Ayjaz Lone, Dy. A. G

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

ORDER

1. The applicant-accused Paltu has filed application for grant of bail in FIR No. 45/2020 registered with Police Station, Vijaypur, District Samba for offences under Sections 363/109 IPC read with Section 8 of the POCSO Act on the ground that the accused is implicated in a false and frivolous criminal case and is in custody for the last more than twenty five days. The bail application filed before the court of learned Principal Sessions Judge, Samba stands dismissed vide order dated 04.05.2020 in a casual and mechanical manner. No offence under Section of the POCSO Act has been made out against the accused as per the application. The girl alleged to be kidnapped has been recovered.
2. The objections to the application have been filed wherein it has been submitted that the accused Ravi Kumar has kidnapped a girl, aged 13 years, after intoxicating her by mixing the intoxicant in her cold drink offered by the accused. The minor girl has been recovered. One of the co-accused in the case, namely, Sita Devi wife of Paltu is absconding from the date of occurrence. The statement of the victim has been recorded in the office of CWC Jakh, Samba. Another co-accused Pawan alias Karan has been released on interim bail for being a minor

- by the learned CJM, Samba on 23.04.2020. The accused Ravi Kumar is alleged to have kidnapped the girl with the help of his parents. The incident is alleged to have occurred when the parents of the girl were not in the house.
3. The challan has also been produced against the accused Ravi Kumar and Paltu in the competent court of law. It is submitted that supplementary challan will also be produced on completion of other formalities which could not be completed due to lockdown.
 4. The learned counsels have made submissions as per their respective pleadings.
 5. At the outset, it may be mentioned that the bail application moved by the accused Paltu before the court of Principal Sessions Judge, Samba has been dismissed vide order dated 04.05.2020. The applicant has filed fresh application for bail. The argument of the learned counsel for the applicant that as the girl has been recovered and that the offence under Section 8 of the POCSO Act is not made out against the accused, the accused may be granted bail.
 6. The learned counsel for the other side has indeed submitted that the accused is involved in a serious offence and cannot be bailed out at this stage of the case.
 7. For the purposes of disposal of the application, the involvement of the accused Paltu can be said to be made out to the extent that he conspired in the kidnapping of the minor girl who stands recovered from the possession of the main accused Ravi Kumar. Ravi Kumar is the son of accused Paltu. Except for mentioning that the family members including the accused Paltu conspired in the kidnapping of the girl, no other allegation is made out against the said accused Paltu. It is not

- brought on record through objections filed by the respondent that accused Paltu had committed sexual assault on the minor girl during the alleged course of occurrence. The accused who is in custody for the last more than forty days should not be denied the bail only if the accused is otherwise entitled to the same for the reason that Section 8 of the POCSO Act has been added in the FIR at the later stage of the case when the involvement of the accused is not *prima facie* made out under the aforesaid Act as per the objections.
8. The accused need not be denied the bail because of the fact that his son and other family members are also accused in the case. The court cannot lose sight of the fact that the challan has also been produced in the Court. It is also not borne out from the record that in case the accused is granted bail there is every possibility of his tampering with the prosecution evidence. The Court finds no impediment in granting bail to the accused Paltu while relying upon the principle of bail and not jail in the present case.
9. The accused is, accordingly, granted bail subject to furnishing of personal bond to the tune of Rs.20,000/- before the Incharge Jail concerned and surety bond to the tune of Rs.20,000/- before the trial court. The accused shall not tamper with the prosecution evidence or make any contact with the family of the girl during the pendency of the challan. Any expression used in the order shall have no bearing on the merits of the challan produced by the prosecution.
10. The application is, accordingly, disposed of.

(PUNEET GUPTA)
JUDGE

Jammu
03.06.2020
Pawan Chopra