

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 24.09.2021.
Announced on 20.10.2021.

Bail App No. 170/2021
CrLM No. 1107/2021
CrLM No. 1242/2021

Ranjit Singh

Petitioner(s)/ Appellant(s)

Through: -

*Mr K. S. Johal, Sr. Advocate with
Mr Supreet Singh Johal, Advocate.*

V/s

Union Territory of J&K

.....Respondent(s)

Through: -

Mr Aseem Sawhey, AAG.

CORAM:

Hon'ble Mr. Justice Javed Iqbal Wani, Judge.

JUDGEMENT

1. The petitioner herein seeks bail in FIR No. 27 of 2020 registered at Police Station, Arnia, for commission of offences punishable under Sections 305/376 IPC read with Section 3/4 of the POCSO Act.
2. According to the prosecution version, on 27.07.2018 at 16:30 hours PCR, Jammu, telephonically informed the PCR Arnia, that one lady namely Priyanka Choudhary D/o Babu Ram, age 20 years, resident of Rathana Camp, (hereinafter for short the deceased) consumed poison and passed away during treatment at GMC Jammu, in suspicious conditions requiring ascertainment of her death whereupon the Inquiry Officer during the course of enquiry is stated to have completed all formalities at GMC Jammu, and handed over the body of the deceased to her legal heirs for performance of her last rites. Statement of the witnesses are stated to have been recorded and viscera of deceased sent to FSL Jammu, for chemical analysis. Satya Devi (mother of the deceased) is stated to have presented one hand written letter and diary of the deceased to the enquiry officer, who upon seizing it is stated to have sent the same to FSL Jammu.

During the course of enquiry, birth certificate of the deceased is stated to have been also received by the enquiry officer revealing her date of birth as 05.01.2002 showing her to be a minor.

After conducting the enquiry and taking into account the statement of Satya Devi-mother of the deceased as also other witnesses inquest proceedings are stated to have been converted into registration of an FIR No. 27/2020 under Sections 376/306 IPC at Police Station, Arnia.

During investigation in the said FIR, statement of Smt Satya Devi, (mother of the deceased) under Section 164 Cr.PC is stated to have been got recorded and on the basis of statements, school certificate of deceased, accused was found to have committed offence under Sections 305/376 IPC read with 3/4 of the POSCO Act.

The accused is stated to have been arrested on 18.04.2021 while serving in Indian Army and is found to have been misleading the deceased on the pretext of marriage intentionally and manipulating her physical, mental relations without her consent having married somewhere else resulting into the committing of suicide by the deceased.

3. Before presentation of charge sheet on 24.04.2021, in the court of Special Judge (POCSO cases) Jammu, (hereinafter for short 'trial court') the petitioner/accused herein had filed a bail application on 19.04.2021 initially before the court of Principal District and Sessions Judge, Jammu, whereafter same had had been assigned for consideration to the trial court on 26.04.2021. The said bail application came to be rejected by the trial court on 23.06.2021.
4. The case setup by the accused/petitioner herein in the instant bail application while praying for bail is that there is no direct evidence connecting the petitioner with the commission of alleged offences and that the case is based upon circumstantial evidence and statement of mother of the deceased Satya Devi recorded on 27.07.2018,

10.09.2018, 16.11.2018 and during the course of investigation on 29.05.2020 and 25.02.201 under Section 164 CrPc.

5. It is stated that offences alleged to have been committed by the petitioner/accused herein are not made out and that the trial court rejected the bail application of the petitioner without appreciating true facts as also the legal position. The accused/petitioner herein is stated to be a married person and during his incarceration, his wife is stated to have given birth to a girl child on 12.06.2021. The accused/petitioner herein is stated have participated in the investigation, and is stated to have deep roots in the society being an Army Personnel and his detention is likely to render him to lose his job and deprive him from looking after his family including old aged parents.
6. **Heard learned counsel for the parties and perused the record.**
7. Counsel for the petitioner while reiterating the contentions raised and grounds urged in the instant application insist for grant of bail in favour of the accused/petitioner herein, whereas, the counsel for the respondents **per contra** controvert and resist the instant application on the basis of objections filed and oppose the grant of bail to the accused/petitioner.
8. Before advertng to the rival contentions of the parties, it would be appropriate and advantageous to refer here under to Sections 305 and 376 IPC and Sections 3 and 4 of the POCSO Act: -

“Section 305. Abetment of suicide of child or insane person.—If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or 1 [imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Section 376. Punishment for rape.—(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

- (a) *being a police officer, commits rape—*
- (i) *within the limits of the police station to which such police officer is appointed; or*
 - (ii) *in the premises of any station house; or*
 - (iii) *on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or*
- (b) *being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or*
- (c) *being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or*
- (d) *being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or*
- (e) *being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or*
- (f) *being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or*
- (g) *commits rape during communal or sectarian violence; or*
- (h) *commits rape on a woman knowing her to be pregnant; or*
- (i) *commits rape on a woman when she is under sixteen years of age; or*
- (j) *commits rape, on a woman incapable of giving consent; or*
- (k) *being in a position of control or dominance over a woman, commits rape on such woman; or*
- (l) *commits rape on a woman suffering from mental or physical disability; or*
- (m) *while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or*
- (n) *commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.”*

Section 3. Penetrative sexual assault.- *A person is said to commit “penetrative sexual assault” if-*

- a) *he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or*
- b) *he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or*

c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Section 4. Punishment for penetrative sexual assault- [1]

Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than (ten years) but which may extend to imprisonment for life, and shall also be liable to fine.

[(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.].

A bare perusal of the aforesaid provisions would tend to show that Section 305 provides for abetment of suicide of child or insane person punishable with death or imprisonment of life or imprisonment for a term not exceeding 10 years with fine, whereas, Section 376 provides for punishment for rape punishable rigorous imprisonment of either description for a term which shall not be less than 7 years, which may extend to imprisonment for life as also liable to fine.

Section 3 of the POCSO Act, provides for penetrative sexual assault, whereas, Section 4 provides for punishment for a term which shall not be less than 10 years which may extend to imprisonment for life as also liable to fine.

9. Before proceeding further in the mater, it becomes imperative to refer to the law laid down by the Apex court from time to time on the

subject of bail and issues connected thereto. The Apex court in case titled “**Neeru Yadav Vs. State of Uttar Pradesh and Another**”, reported in 2014 (16) SCC 508, has laid down at para 9, 10 and 16 as under: -

“9. In this context, a fruitful reference be made to the pronouncement in Ram Govind Upadhyay V. Sudarshan Singh, wherein this court has observed that grant of bail though discretionary in nature, yet such exercise cannot be arbitrary, capricious and injudicious, for the heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependent on the factual matrix of the matter. In the said decision, reference was made to Prahlad Singh Bhati v. NCT of Delhi and the court opined thus: (Sudarshan Singh case, SCC p.602, para 4)

- (a) *“While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*
- (b) *Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complaint should also weigh with the court in the matter of grant of bail.*
- (c) *While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.*
- (d) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail”*

“10. In Chaman Lal v. State of U.P., the court has laid down certain factors, namely, the nature of accusation, severity of punishment in case of conviction and the character of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and prima facie satisfaction of the court in support of the charge, which are to be kept in mind.”

“16. The issue that is presented before us is whether this court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that liberty is a priceless treasure for a human being. It is founded on the bedrock of the constitutional right and accentuated further on the human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilization rests. It cannot be allowed to be paralyzed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic polity which is wedded to the rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the society. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

Further, a reference to the judgement of the Apex Court passed in **“Anil Kumar Yadav Vs. State (NCT of Delhi), reported in 2018 (12) SCC 129**, would be appropriate and relevant herein wherein at para 17 and 18 following has been provided: -

“17. While granting bail, the relevant considerations are:- (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii)

likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard and fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.”

“18. *While considering the basic requirements for grant of bail, in State of U.P. through CBI v. Amarmani Tripathi, this Court has held as under:-*

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State (NCT of Delhi). While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan

'11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where

the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas.”

10. With the aforesaid legal position in mind, the instant bail application may be considered.
11. The grounds urged by the accused/petitioner herein for bail is based on the contentions that there is no direct evidence connecting the petitioner with the commission of alleged offence and that the offence alleged to have been committed by the petitioner are not made out and that the whole case setup against the petitioner is based upon circumstantial evidence and that the statements of the mother of deceased including one related under Section 164 Cr.PC.
12. Admittedly a minor girl of the age of 16 years has died otherwise than under normal circumstances who allegedly has attributed reasons thereof to the petitioner herein while divulging the same to her mother-Satya Devi during the last hours of her life on way to the hospital as also allegedly having written the same in her diary. There is no explanation offered by the petitioner in the instant petition in response to the said allegations. The chain of events revealed from the prosecution case do *prima-facie* at this stage connect the accused/petitioner herein with the commission of alleged offences.
13. The general contentions and grounds urged by the accused/petitioner herein that he did not commit the alleged offence and that there is no direct evidence connecting him with the commission of alleged offence or that the case of prosecution is based on circumstantial evidence cannot alone be taken into account at this stage, either

discarding or else overlooking the evidence collected by the prosecution during the investigation being part of the charge sheet against the accused/petitioner herein and same in view of the principles laid down by the Apex court in the judgements supra particularly regarding nature of accusation, severity of punishment in case of conviction and nature of supporting evidence as also reasonable apprehension of tampering with witness or apprehension of threat to complainant, have to be considered before grant of bail.

14. Here an excerpt from the judgement of the Apex court passed in “Neeru Yadav’s” case supra, at the cost of risking repetition requires to be extracted hereunder having regard to the peculiar facts and circumstances of the case, with respect to the question of the liberty of an individual as against the norms of the society:

“A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

15. For all what has been observed, considered and analyzed hereinabove, the petitioner herein is not held entitled to bail at this stage. The instant bail application thus, merits dismissal and is, accordingly, **dismissed.**
16. In view of above the plea of applicability of Section 29 of the POCSO Act, urged by the counsel for the respondents to the case of the petitioner setup in the instant petition even at pre charge stage while considering the instant petition and denied by the counsel for the petitioner pales into insignificance and as such, need not to be addressed to.

17. It is, however, made clear that any observation made herein above shall not be construed to be expression of any opinion about the guilt or innocence of the accused/petitioner herein.
18. Dismissed as above along with connected CMs.

(Javed Iqbal Wani)
Judge

Jammu:
20.10.2021

“shaq”

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

