

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App. No. 101/2024

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...Appellant(s)/Petitioner(s)

Through: Ms. Ayshia Zaheer, Advocate

Vs.

Afaq Ali Khan

...Respondent(s)

Through: Mr. Shariq Riyaz Jan, Advocate
Mr. Bikram Deep Singh, Dy. AG for R-2

CORAM:

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

23.04.2026

1. The petitioner, who is the complainant/victim before the Trial Court, has invoked the jurisdiction of this Court under Section 483(2) of the BNSS to assail the bail order dated 03.08.2024 passed by Additional Sessions Judge, Fast Track Court, Budgam *the trial court* in case FIR No. 272/2023 registered under Sections 376 and 506 IPC. By virtue of the impugned order, the accused/respondent, who was facing trial for the aforesaid offences, and had earlier been granted interim bail on 16.12.2023, has been enlarged on regular bail by making the interim bail absolute.
2. It is the specific case of the petitioner that, having regard to the grave nature and seriousness of the offence, the Trial Court has failed to appreciate the severity of the allegations, which inherently carry profound social stigma and inflict severe mental trauma upon the victim. It is contended that such factors ought to have weighed heavily against the grant of bail. It is further submitted that the accused/respondent is an influential person and a habitual offender, as reflected in the charge-sheet, and thus there existed a strong likelihood of misuse of liberty.
3. The petitioner further contends that despite the existence of strong prima facie evidence, the learned Trial Court has proceeded to pass a cryptic

and non-reasoned order. The statement of the victim recorded on oath under Section 164 Cr.P.C., duly corroborated by medical evidence and supported by an independent witness, attracted the statutory presumption under Section 114-A of the Evidence Act against the accused. However, the Trial Court, by misapplication of settled principles of law, has overlooked these crucial aspects and erroneously granted bail.

4. Placing reliance on the judgment reported as 2025 INSC 877, it has been argued that grant of bail by way of a cryptic order, bereft of cogent reasons, results in perversity of justice. It is urged that when a person accused of a grave and heinous offence is enlarged on bail without due application of mind, it not only undermines the confidence of the victim but also shocks the conscience of the Court and has a deleterious impact on society at large.
5. Briefly stated, the case of the prosecution before the Trial Court is that the accused/respondent was a neighbour of the petitioner/victim and had been persistently following her and attempting to establish contact. It is alleged that the respondent, by falsely representing himself as a well-settled individual employed in a reputed company and portraying himself as a decent person, extended a proposal of marriage to the victim. Relying upon such representations, and without disclosing the same to her parents, the victim developed trust in the respondent and consented to a relationship, which subsequently resulted in repeated sexual encounters over a period of time.
6. It is further alleged that during the subsistence of the relationship, the respondent clandestinely recorded the intimate acts without the knowledge or consent of the victim. Upon gaining suspicion, the victim confronted the respondent, who attempted to allay her concerns by stating that the videos were “cherished memories” of their relationship and assured her that the same would be deleted. Trusting his assurances, the victim continued the relationship.
7. However, on one occasion, the victim gained access to the respondent’s mobile phone and discovered that he had recorded numerous such videos not only with her but also depicting sexual acts with several other women, which were further stored in his laptop. Upon confrontation, the

respondent allegedly resorted to blackmailing the victim and demanded an amount of ₹10,00,000/- in lieu of deleting the said videos.

8. The prosecution further alleges that the respondent was habitually engaged in luring innocent women on the false pretext of marriage and thereafter sexually exploiting them. Disturbed by these revelations, the victim disclosed the entire incident to her parents and lodged a complaint on 23.09.2023, which culminated in the registration of FIR No. 272/2023 and the arrest of the respondent. Pursuant to his disclosure, a pen drive, mobile phone, and laptop were recovered.
9. As per the prosecution, forensic examination of the seized electronic devices revealed multiple recorded instances of sexual encounters involving the respondent and different women. Two such victims, cited as PW-2 and PW-8, came forward to support the prosecution case and were examined under Section 161/164 Cr P C.
10. On the aforesaid basis, it is the case of the prosecution that the respondent, by extending a false promise of marriage and misrepresenting his intentions, induced the victim into a physical relationship and thereafter exploited her by recording intimate videos and using the same as a tool for coercion and blackmail. It is alleged that the respondent systematically targeted and exploited women in a similar manner, and threatened them with the publication of such videos in case of non-compliance. Accordingly, the respondent has been charge-sheeted for offences punishable under Sections 376 and 506 IPC.
11. On the other hand, opposing the submissions advanced on behalf of the petitioner, counsel for the respondent has contended that the entire prosecution case is false, fabricated, and an abuse of the process of law. It is submitted that the petitioner had voluntarily entered into the relationship and had consented to the alleged sexual acts out of her own free will. Rather, it is contended that the petitioner herself had been exploiting the respondent and had, at one point in time, induced him to transfer certain amounts into her bank account.
12. It is further argued that the Trial Court has rightly exercised its judicial discretion in granting bail to the respondent, who continues to enjoy the presumption of innocence until proven guilty. The impugned order,

therefore, does not suffer from any illegality or perversity warranting interference by this Court.

13. Refuting the allegation of the petitioner that her consent was obtained under a misconception of fact, learned counsel submits that such a plea is devoid of any factual and legal foundation. It is contended that the prosecution has yet to establish, by way of cogent evidence, that the respondent had indulged in any form of deception or false promise. In the absence of proof of such foundational facts, no adverse inference can be drawn against the respondent at this stage. It is thus urged that the Trial Court, having duly considered the material on record, has rightly granted bail, and the same does not call for any interference in the exercise of jurisdiction under Section 483(2) BNSS.
14. During the course of arguments, it was fairly conceded by counsel for both the parties that at the time of consideration of the bail application, formal charges had not yet been framed against the respondent. However, it was not in dispute that the statement of the victim had already been recorded under Section 164 Cr.P.C., wherein she had furnished a detailed account of the manner in which she was allegedly induced and trapped into entering into sexual relations with the respondent.
15. It has further been pointed out, that the respondent had initially been granted interim bail by the Trial Court on 16.12.2023. The said order was subsequently challenged by the petitioner before this Hon'ble Court, which came to be disposed of with a direction to the Trial Court to decide the bail application expeditiously, while granting liberty to the petitioner to approach this Court again in the event of an adverse order.
16. Pursuant thereto, the Trial Court, vide order dated 03.08.2024, made the interim bail absolute, which has now been assailed in the present petition. It has also been brought on record that during the subsistence of interim bail, the respondent came to be formally charged for offences under Sections 376 and 506 IPC on 29.07.2024.
17. Thus, it is evident that at the time when the respondent was granted bail, the material available before the Trial Court was primarily in the nature of the charge-sheet and the statement of the victim recorded under Section 164 Cr.P.C., and the Court had yet to undertake the judicial

exercise of determining whether a prima facie case existed for the purpose of framing of charge against the respondent.

18. I have given my thoughtful consideration to the submissions advanced at the Bar. It is a well-settled principle, consistently reiterated in various pronouncements of the Hon'ble Supreme Court, that while considering the grant of bail, particularly in cases involving serious and heinous offences, the Court is required to take into account several relevant factors, including the nature and gravity of the accusations, the manner in which the alleged offence has been committed, the specific role attributed to the accused, his criminal antecedents, the likelihood of the accused tampering with prosecution witnesses or repeating the offence, the possibility of his absconding or evading the course of justice, and the overall impact of release on bail on the fair administration of justice. In this regard, reference may be made to **Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav (2004) 7 SCC 528**, , **Masroor vs. State of Uttar Pradesh(2009) 14 SCC 286**, **Anil Kumar Yadav vs. State (NCT of Delhi)(2018) 12 SCC129**, , and **Mahipal vs. Rajesh Kumar(2020) 2 SCC118.**, wherein the parameters governing grant of bail have been elaborately laid down.
19. Equally, it is trite that once bail has been granted, the same ought not to be cancelled in a mechanical manner. However, it is equally well settled that an order granting bail, if found to be arbitrary, perverse, or bereft of reasons, is always amenable to interference by a superior court. This principle has been reiterated in **Ajwar vs. Waseem. (2024) 10 SCC 768**.
20. In a recent judgment of the Hon'ble Apex Court, relied upon by learned counsel for the petitioner, reported as **(2025) INSC 877**, the accused, who was facing prosecution for offences under Section 376 IPC read with Sections 3/4 of the Immoral Traffic (Prevention) Act and relevant provisions of the SC/ST Act, had been granted bail by the High Court, which was challenged by the victim before the Hon'ble Supreme Court. In that case, while the Special Court had initially rejected the bail application, the High Court proceeded to grant bail; however, the Hon'ble Supreme Court, upon examining the matter, emphasized that in cases involving grave offences, the grant of bail must be supported by

cogent reasons reflecting due application of mind, failing which such orders are liable to be set aside.

21. In the backdrop of the aforesaid legal position and upon a careful consideration of the material placed on record, this Court is of the considered opinion that the impugned order dated 03.08.2024 passed by the Trial Court granting bail to the respondent cannot be sustained in the eyes of law.
22. A perusal of the impugned order reveals that the Trial Court has failed to advert to the material aspects of the case, particularly the detailed statement of the victim recorded under Section 164 Cr.P.C., the nature of allegations involving inducement on the false promise of marriage, and the serious accusations of exploitation coupled with blackmail through electronic means. The order, being cryptic in nature, does not reflect due application of mind to the gravity of the offence or the manner in which the alleged crime has been committed.
23. This Court further finds that the allegations against the respondent are not only grave but disclose a systematic pattern of conduct, as is evident from the recovery of electronic devices and the forensic material indicating similar acts with other victims. The existence of supporting witnesses, prima facie corroborating the prosecution case, further strengthens the accusation at this stage. These crucial aspects, which go to the root of the matter, have not been duly considered by the Trial Court while granting bail.
24. Moreover, the stage at which bail came to be granted assumes significance. At the relevant time, the Trial Court was yet to undertake the exercise of framing of charge, and the material available on record, including the statement under Section 164 Cr.P.C., prima facie disclosed the commission of serious offences. The subsequent framing of charges on 29.07.2024 further reinforces the existence of sufficient grounds to proceed against the respondent. In such circumstances, the grant of bail, without a proper evaluation of the material, amounts to a misapplication of settled principles governing bail. In view of the law laid down in *Mahipal vs. Rajesh Kumar* and *Ajwar vs. Waseem supra* an order granting bail which is found to be perverse, arbitrary, or passed without

due consideration of relevant factors is liable to be set aside by a superior court.

25. The contention raised on behalf of the respondent that the relationship between the parties was consensual and, therefore, does not fall within the ambit of an offence, is also devoid of merit at this stage. The concept of “consent” in law cannot be examined in a vacuum, especially where the allegations, prima facie, disclose that such consent was obtained on the basis of deception or misconception of fact. The statement of the victim recorded under Section 164 Cr.P.C., coupled with the surrounding circumstances brought on record, indicates that the respondent had allegedly induced the victim into the relationship on the false promise of marriage, which, if established, would vitiate the consent in terms of settled legal principles.
26. At the stage of consideration of bail, the Court is not required to conduct a meticulous examination of evidence or record definitive findings on the issue of consent. It is sufficient if the material on record discloses a prima facie case. In the present matter, the allegations of inducement, coupled with subsequent acts of recording intimate videos and alleged blackmail, lend credence to the prosecution version that the consent, if any, was not free and voluntary but was obtained under a misconception of fact. The plea of consensual relationship, therefore, raises disputed questions of fact which can only be adjudicated upon during trial on the basis of evidence led by the parties, and cannot be a determinative factor at this stage to justify the grant of bail, particularly when the material on record prima facie points otherwise.
27. It has been argued on behalf of the respondent that since the trial is already underway and the accused enjoys the presumption of innocence until proven guilty; no useful purpose would be served by remanding him back to custody. However, this submission does not merit acceptance in the facts and circumstances of the present case. The presumption of innocence, though a fundamental principle of criminal jurisprudence, cannot be invoked in isolation so as to eclipse other equally important considerations governing the grant or cancellation of bail, particularly in cases involving serious offences. The continuation of trial by itself does

not dilute the requirement that the order granting bail must withstand the test of legality, reasonableness, and proper application of judicial mind.

28. Where the order granting bail is found to be perverse, cryptic, or passed in disregard of material evidence and settled principles of law, the mere fact that the trial has commenced cannot be a ground to sustain such an order. The paramount consideration remains whether the discretion to grant bail has been exercised judiciously and in accordance with law. If the answer is in the negative, as in the present case, the accused cannot claim continuation of liberty on the sole premise of the ongoing trial. Hence, when a person accused of a grave and heinous offence is enlarged on bail without due application of mind, it not only undermines the confidence of the victim but also shocks the conscience of the Court and has a deleterious impact on society at large. Accordingly, this Court holds that the impugned order suffers from non-application of mind and perversity, and has resulted in miscarriage of justice, the same, therefore, warrants interference.

29. Consequently, the present petition is allowed. The impugned order dated 03.08.2024 passed by the Additional Sessions Judge, Fast Track Court, Budgam, is hereby set aside. The bail granted to the respondent stands withdrawn, he is committed to custody and directed to surrender before the Trial Court forthwith, failing which it shall take appropriate coercive steps to secure his presence in accordance with law. It is, however, made clear that any observations made herein are confined to the adjudication of the present petition and shall not be construed as an expression on the merits of the case during trial. He may, however, renew his prayer for bail after the material witnesses have been examined during trial; any such application shall be considered and decided in accordance with law.

(SANJAY PARIHAR)
JUDGE

Srinagar
23.04.2026
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