

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App. No. 230/2025 C/W
CrI. R. No. 1/2025

Reserved on: 19.05.2026
Pronounced on: 02.06.2026
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Operative part or full Judgement: **Full**

Farooq Ahmad Dar (59 Yrs.)
S/O Gh. Mohammad Dar
Through his son,
Naveed Farooq Dar
R/O Sogam, Lolab, Kupwara,

...Petitioner(s)

Through:

Mr. Zahir Ahmad Wani, Advocate

Vs.

1. **UT of J&K through,**
SHO Police Staton (Women),
Kupwara.
2. **Superintendent Sub Jail,**
Kupwara, J&K.
3. **Asma Amin**
D/O Mohd Amin Shah
R/O Muqam-Lolab,
District Kupwara, J&K.

...Respondent(s)

Through:

Mr. Faheem Nisar Shah, GA

CORAM: HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE

JUDGEMENT

Bail App. No. 230/2025:

01. Through the medium of the instant application, the applicant seeks grant of bail in a case arising out of FIR No. 17/2022 registered under Sections 376 and 506 IPC, at Police Station Women Wing Kupwar, on 13.06.2022, alleging that the applicant has been falsely implicated due to long-standing family disputes

arising out of the marriage of the applicant with the mother of the prosecutrix. It is contended that the prosecutrix herself had approached the son of the applicant for filing a petition under Section 482 Cr PC before this Court seeking quashment of the FIR, which according to learned counsel materially affects the credibility of the prosecution case.

02. The respondents, vehemently, opposes the application and submit that the allegations levelled against the applicant are grave and heinous in nature involving commission of offence punishable under Section 376 IPC; that the prosecutrix has fully supported the prosecution case and her statement recorded under Section 164 Cr PC, clearly corroborates the allegations levelled in the FIR. It is further submitted that the medical evidence collected during investigation also supports the prosecution version and establishes a strong *prima facie* case against the applicant.

03. Learned counsel for the applicant submits that material contradictions and improvements have surfaced in the statements of the prosecutrix during trial proceedings; that the prosecutrix has given varying versions regarding the alleged occurrence and that the medical evidence does not support the allegations of forcible sexual assault; that the learned Trial Court rejected the applicant's application filed under Section 233(3) Cr PC seeking summoning of defence witnesses and the said order is presently under challenge before this Court in the clubbed Criminal Revision Petition No. CrI R-1/2025, wherein proceedings before

the learned Trial Court have been stayed.

04. Learned counsel for the applicant further submits that the applicant has remained in custody since 13.06.2022, has no criminal antecedents, is a Government employee having deep roots in society and is not likely to flee from justice or tamper with evidence, as such, he is entitled to be released from custody on admission to bail.
05. Learned counsel for the respondents submits that the applicant, if enlarged on bail, is likely to influence and intimidate material witnesses, particularly the prosecutrix, and there exists every possibility of tampering with prosecution evidence.
06. Heard learned counsel for the parties, perused the record and considered.
07. The prosecution case, as emerging from the record, is that the applicant subjected the prosecutrix to repeated acts of sexual assault and criminal intimidation over a prolonged period, pursuant where to the aforesaid FIR came to be registered against him. Upon completion of investigation, challan was presented before the Court of learned Additional Sessions Judge (Fast Track Court), Kupwara, where charges under Sections 376 and 506 IPC stand framed against the applicant.
08. The principles governing grant of bail in serious offences are well settled. While considering a bail application, the Court is required to examine the nature and gravity of accusation, severity of punishment in the event of conviction, possibility of tampering with evidence, likelihood of influencing witnesses and the larger

interests of society. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in *State of U.P. through CBI v. Amarmani Tripathi*, (2005) 8 SCC 21, wherein the parameters governing grant of bail were authoritatively laid down.

09. The Hon'ble Supreme Court has consistently held that though "bail is the rule and jail is the exception", yet in cases involving serious offences against women, particularly offences punishable under Section 376 IPC, the Court is required to exercise greater caution while balancing the liberty of the accused with societal interest and the rights of the victim. Reliance in this regard may be placed upon *Prahlad Singh Bhati v. NCT of Delhi and Anr.*, (2001) 4 SCC 280 and *Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118, wherein the Hon'ble Supreme Court emphasized that seriousness of the offence and impact on society are relevant considerations while dealing with bail applications.
10. From the material placed on record, it *prima facie* appears that the prosecutrix has supported the prosecution case not only in the FIR but also in her statement recorded under Section 164 Cr PC. The evidentiary value and appreciation of alleged contradictions and improvements as pointed out by learned counsel for the applicant, are matters to be adjudicated upon during the course of trial and cannot be conclusively examined at the stage of consideration of plea for grant of bail.
11. This Court is also conscious of the settled legal position that offence under Section 376 IPC is offence not only against victim

but also against society, to be treated as private disputes capable of being resolved through compromise between the parties. In *Shimbhu and Anr. v. State of Haryana*, (2014) 13 SCC 318, the Hon'ble Supreme Court held that rape is a non-compoundable offence and compromise between the parties cannot be a ground to take a lenient view in such matters. Similarly, in *State of Madhya Pradesh v. Madanlal*, (2015) 7 SCC 681, the Hon'ble Supreme Court deprecated the practice of showing indulgence in sexual offences on the basis of compromise or settlement.

12. The contention raised by the applicant regarding filing of a petition under Section 482 Cr PC seeking quashment of FIR also cannot, at this stage, dilute the seriousness of the allegations levelled against the applicant. The circumstances under which such petition came to be filed and subsequently withdrawn are issues which require proper appreciation during trial proceedings.
13. This Court also cannot lose sight of the fact that the allegations against the applicant pertain to repeated sexual assaults coupled with criminal intimidation. The gravity and seriousness of the offence alleged against the applicant weigh heavily against grant of bail.
14. The apprehension expressed by the prosecution regarding possibility of influencing witnesses and prejudice to fair trial also cannot be brushed aside lightly, particularly considering the relationship between the parties and the nature of allegations involved in the matter.
15. The pendency of Criminal Revision Petition challenging rejection

of the application under Section 233(3) Cr PC does not, by itself, entitle the applicant to concession of bail, especially when the prosecution case discloses existence of a *prima facie* case against him.

16. Another significant circumstance which disentitles the applicant from the concession of bail at this stage is that the alleged compromise between the parties appears to have been arrived at after framing of charges by the learned Trial Court. Such compromise, in the facts and circumstances of the present case involving allegations under Section 376 IPC, cannot be accorded undue weight so as to dilute the gravity of the accusations. The offence alleged is not merely against an individual but has serious societal ramifications, and any subsequent settlement between the parties cannot, by itself, constitute a ground for grant of bail, particularly when the trial is already underway and the prosecution has disclosed a *prima facie* case against the applicant.
17. Having regard to the nature and gravity of allegations, the stage of trial, the material available on record and without expressing any opinion on the merits of the case, this Court is not inclined to grant bail to the applicant at this stage.
18. Accordingly, the instant bail application is **dismissed**. However, it is clarified that any observation made hereinabove shall not be construed as an expression on the merits of the case and shall remain confined to disposal of the present bail application only.

CrI. R. No. 1/2025 & CrIM No. 38/2025:

19. Through the medium of the instant criminal revision petition, the

petitioner seeks quashment of order dated 17.12.2024 passed by learned Additional District & Sessions Judge as Presiding Officer of the Fast Track Court, Kupwara (for short "*the Trial Court*"), whereby application filed by the petitioner under Section 233(3) Cr PC seeking summoning of defence witnesses in case arising out of FIR No. 17/2022 registered under Sections 376 and 506 IPC came to be rejected.

20. Briefly stated, the prosecution case pertains to allegations of commission of offences punishable under Sections 376 and 506 IPC against the petitioner, pursuant where to challan was presented before the learned Trial Court and charges came to be framed against him on 25.08.2022.
21. Record reveals that after conclusion of prosecution evidence and recording of statement of the accused under Section 313 Cr PC, the petitioner entered upon his defence and examined three defence witnesses, in support of his case.
22. Thereafter, the petitioner moved an application under Section 233(3) Cr PC seeking summoning of certain additional witnesses primarily on the ground that subsequent developments had taken place during trial, particularly relating to filing of a petition under Section 482 Cr PC before this Court by the prosecutrix seeking quashment of the FIR.
23. It was contended before the learned Trial Court that the proposed witnesses were necessary for proper adjudication of the matter and for proving subsequent conduct of the prosecutrix allegedly relevant to the defence of the accused.

24. The learned Trial Court, after considering the submissions of both sides and objections filed by the prosecution, rejected the application vide impugned order dated 17.12.2024.
25. Learned counsel appearing for the petitioner submits that the learned Trial Court has failed to appreciate the true scope and mandate of Section 233(3) Cr PC. It is argued that the provision confers a valuable statutory right upon the accused to summon witnesses in defence and that such right can be curtailed only where the Court records satisfaction that the application is vexatious, intended for delay, or meant to defeat the ends of justice.
26. Learned counsel further submits that the witnesses sought to be summoned were material witnesses whose testimony was essential for proving the conduct of the prosecutrix in filing and subsequently withdrawing the petition under Section 482 Cr PC, which according to learned counsel materially affects the credibility of the prosecution case.
27. Per contra, learned counsel appearing for the respondents supports the impugned order and submits that the application filed by the petitioner was rightly rejected by the learned Trial Court, contending that the petitioner had already availed sufficient opportunity to lead defence evidence and had examined three defence witnesses.
28. It is further submitted that the proposed evidence sought to be introduced by the petitioner was neither essential for adjudication of the controversy nor relevant to determination of the charges.

framed against the accused. Learned counsel submits that the application was filed at a belated stage after conclusion of prosecution evidence and recording of statement under Section 313 Cr PC, only with a view to prolong the proceedings.

29. Heard learned counsel for the parties and perused the record.
30. Section 233(3) Cr PC undoubtedly confers upon an accused a valuable right to seek issuance of process for compelling attendance of witnesses or production of documents in defence. However, the said right is not absolute in nature and the Court is vested with discretion to refuse such request where it appears that the application is intended for vexation, delay, or defeating the ends of justice.
31. The revisional jurisdiction of this Court against interlocutory or procedural orders passed during trial is limited in scope. Unless the impugned order suffers from patent illegality, jurisdictional error, perversity or manifest miscarriage of justice, interference in exercise of revisional powers is ordinarily unwarranted.
32. From perusal of the impugned order, it appears that the learned Trial Court has duly considered the nature of evidence sought to be adduced by the petitioner and has recorded reasons while declining the prayer for summoning of additional witnesses.
33. The principal ground urged by the petitioner relates to filing of a petition under Section 482 Cr PC by the prosecutrix seeking quashment of FIR. *Prima facie*, the said aspect already forms part of the record and documents relating thereto have admittedly been placed before the Trial Court. The petitioner has also

examined defence witnesses in support of his version.

34. This Court is of the considered view that the learned Trial Court was justified in concluding that summoning of additional witnesses at the advanced stage of trial was not necessary for just adjudication of the case. The relevancy, admissibility and evidentiary value of documents already produced by the accused can very well be appreciated by the learned Trial Court at the stage of final adjudication.
35. The contention of learned counsel for the petitioner that refusal to summon additional witnesses amounts to denial of fair trial does not merit acceptance in the facts and circumstances of the present case, particularly when sufficient opportunity has already been granted to the petitioner to lead defence evidence.
36. This Court is of the considered opinion that while fair opportunity must be afforded to an accused to defend himself, the Court is equally duty-bound to ensure that criminal proceedings are not unnecessarily prolonged under the guise of additional evidence.
37. Having regard to the totality of circumstances, this Court does not find any illegality, perversity or jurisdictional error in the impugned order dated 17.12.2024 passed by the learned Trial Court, warranting interference in exercise of revisional jurisdiction.
38. The learned Trial Court shall proceed with the matter in accordance with law and shall make endeavor to expeditiously conclude the trial.
39. It is clarified that any observation made hereinabove shall not be

