

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

Pronounced on:05.06.2026

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Whether the operative
part or full order is
pronounced: **Full**

Bail App No.42/2026

SHAHNAWAZ AMIN SHAH ...PETITIONERS/APPELLANT(S)

Through: - Mr. Mir Umer, Advocate.

Vs.

UT OF J&K AND ANR. ...RESPONDENT(S)

Through: - Mr. Bikramdeep Singh, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT(ORAL)
05.06.2026

1) The petitioner has invoked jurisdiction of this Court under Section 483 of BNSS seeking bail in a case arising out of FIR No.01/2025 for offences under Section 64, 137(2) of BNS and Section 4 of POCSO Act registered with Police Station, Magam, which is stated to be pending before the Court of learned Principal Sessions Judge, Budgam (hereinafter referred to as "the trial court")

2) Briefly stated, as per the prosecution case, on 02.01.2025, PW-1, father of the prosecutrix, lodged a written report with the police alleging therein that his minor

daughter, aged about 16 years, has been kidnapped by the accused (the petitioner herein) on 1st January, 2025 and that she has been taken to some undisclosed location. On the basis of this report, FIR No.01/2025 for offence under Section 137(2) of BNS was registered and investigation of the case was set into motion. During the course of investigation, the statements of witnesses acquainted with the facts of the case were recorded, whereupon it was revealed that the prosecutrix had been kidnapped by the petitioner herein and that he has concealed her in a house situated at Dooru Shahabad, Anantnag. On the basis of the disclosure statement made by the petitioner/accused, the prosecutrix was recovered from the aforesaid location. The petitioner was arrested and the prosecutrix was subjected to medical examination. Her statement under Section 183 of BNSS was recorded by the Judicial Magistrate 1st Class.

3) In her statement recorded before the learned Magistrate, the prosecutrix deposed that she is studying in 11th Class and that the petitioner used to work at a construction site near her house. She further stated that the petitioner tried to start a conversation with her and sent a letter to her with his mobile number written on it. She tried to avoid the petitioner for some time but finally called him on phone. This led to regular conversation between the

two and they became friends. The prosecutrix further stated that this state of affairs continued for about two months and in the middle of December, 2024, when she went to her maternal grandmother's house, the petitioner told him that on her return, he would meet her. On 1st January, 2025, at around 10 a.m., the prosecutrix went to meet the petitioner. They boarded a vehicle and reached Kanihama where the petitioner collected some luggage including a briefcase and bag. Again, they boarded a local bus to Srinagar and on reaching Srinagar, the petitioner asked the prosecutrix to accompany him to a friend's house in Anantnag. The two left for Anantnag and reached Dooru where the petitioner took her inside a house. He told the prosecutrix not to divulge anything to the inmates of the house and he presented her as his wife before the inmates of the house. The two stayed for a night over there and during the night, the petitioner is stated to have committed forcible sexual intercourse with her. On the next morning at about 9.30 a.m., the petitioner left the house leaving behind the prosecutrix. At around 2.00 p.m., police personnel came over there and rescued her.

4) During the course of investigation, the Investigating Agency also collected the age proof of the prosecutrix which showed her date of birth as 27th December, 2008. The date

of birth certificate of the petitioner was also collected which showed that he was born on 28.04.1992.

5) After completing investigation of the case, charge sheet came to be produced before the trial court on 12.02.2025. On 04.04.2025, the learned trial court proceeded to frame charges for offences under Section 137(2), 64, 351(2) of BNS and Section 4 of POCSO Act. The record of the trial court shows that till date out of 16 witnesses cited in the challan, 06 witnesses, which includes the prosecutrix and her parents, have been examined. It also appears that the petitioner had approached the learned trial court for grant of bail but his application has been dismissed in terms of order dated 04.10.2025.

6) The petitioner has sought bail on the grounds that no offence is made out against him as the prosecutrix has, during trial of the case, admitted that she had gone with the petitioner out of her own will and volition. It has been further contended that even the other prosecution witnesses have not supported the prosecution version. It has also been contended that all the material prosecution witnesses have been examined in the case and, as such, continued incarceration of the petitioner cannot be justified. Lastly, the petitioner has undertaken to abide by

all the conditions that may be imposed upon him by this Court in case bail is granted in his favour.

7) The respondent-State in its reply to the bail application has, besides reiterating the allegations made in the challan against the petitioner, contended that the victim in the instant case is a minor, so even if it is assumed that she has gone out of her own will and volition with the petitioner, the same is of no legal value. It has been further contended that in case the petitioner is enlarged on bail, there is every chance that he may influence, threaten or intimidate the victim and other prosecution witnesses. It has also been contended that the petitioner has committed a heinous offence, as such, he does not deserve the concession of bail.

8) Notice of this bail petition was also issued to the victim through her father but despite service, father of the victim did not appear before this Court.

9) I have heard learned counsel for the parties and perused record of the case including record of the trial court.

10) In the present case, undoubtedly, the allegations made against the petitioner are serious in nature as he is alleged to have committed rape upon the victim who, at the

relevant time, was aged only about 16 years. The petitioner is facing trial for offence under Section 4 of POCSO Act and there is a statutory presumption of guilt operating against him, though the same is rebuttable in nature.

11) The main ground that has been urged by learned counsel for the petitioner in support of the prayer for grant of bail to the petitioner is that the prosecutrix has admitted in her deposition before the trial court during trial of the case that she had gone with the petitioner out of her own will as she was in deep love and affection with him.

12) In the above context, if we have a look at the statement of the prosecutrix recorded during trial of the case, it does reveal that she has stated in categorical terms that she was in contact with the petitioner for about two months on phone. She has further admitted that she accompanied the petitioner in a public service vehicle on 1st January, 2025 upto Kanihama, whereafter she boarded a bus with the petitioner upto Narbal. She has stated that at Narbal, the petitioner went to his room while she waited for him on the roadside. She has further stated that the petitioner collected bag from his room and thereafter both of them boarded a Tavera vehicle upto Srinagar, where they boarded another vehicle towards Anantnag. On reaching Anantnag,

they again changed the vehicle to reach Dooru, where they stayed in a house and the petitioner projected her as his wife before the inmates of the house. She went on to state that during night, the petitioner developed physical relations with her. In her cross-examination, she stated that she would talk to the petitioner about 3-4 times a day on phone and while talking, they would express love for each other. She also stated that she boarded the vehicles with the petitioner out of her own will and volition and whatever the petitioner did with her, was out of her own will and volition because they love each other.

13) In the context of the contention of the petitioner that the prosecutrix is in deep love with him, the statement of mother of the prosecutrix, PW-3, is also of some relevance. She, in her cross-examination, has stated that the prosecutrix and the petitioner were in love with each other and that the petitioner did not kidnap the prosecutrix. She further stated that the prosecutrix left her home of her own accord. She went on to state that even after arrest of the petitioner, the prosecutrix continues to live with the family of the petitioner because she intends to marry him. She further stated that many a times she asked the prosecutrix to come back to her home but she did not agree to it and she insists that she would enter into wedlock with the

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petitioner. The witness further stated that she desires that the petitioner should be set free so that marriage between him and the prosecutrix is solemnized.

14) In view of the aforesaid nature of evidence that has come on record during trial of the case, the question arises as to whether the petitioner has been able to make out a case for grant of bail. While consent of the prosecutrix is legally irrelevant in cases involving offences under the POCSO Act, yet the Courts have recognized the relationships among young adults in cases where there may have been de-facto approval of young adults for a sexual relationship. Such sexual relationships are definitely misguided but have to be treated on a different footing. When the facts and circumstances of a particular case show that there was tacit approval in fact, though not consent in law for the sexual intercourse between two young adults, the offence that may have been committed has to be looked at with less severity.

15) The Supreme Court in the case of **State of Uttar Pradesh vs. Anurudh & anr.** 2026 LiveLaw (SC) 29, has, in the context of misuse of POCSO Act, highlighted the grim societal chasm. In this context the Court took note of the several instances of application of POCSO Act, working harshly on consenting adolescence teenagers when it comes

to consensual relationship between teenagers. The Supreme Court has noted that Allahabad High Court has in the case of **Satish alias Chand vs. State of UP** (Crl. Mis. Bail Application No.18596 of 2024) highlighted the factors required to be considered by the Courts while dealing with cases relating to relationship between teenagers. The same are reproduced as under:

A. Assess the Context: Each case should be evaluated on its individual facts and circumstances. The nature of the relationship and the intentions of both parties should be carefully examined.

B. Consider Victim's Statement: The statement of the alleged victim should be given due consideration. If the relationship is consensual and based on mutual affection, this should be factored into decisions regarding bail and prosecution.

C. Avoid Perversity of Justice: Ignoring the consensual nature of a relationship can lead to unjust outcomes, such as wrongful imprisonment. The judicial system should aim to balance the protection of minors with the recognition of their autonomy in certain contexts. Here the age comes out to be an important factor.

D. Judicial Discretion: Courts should use their discretion wisely, ensuring that the application of POCSO does not inadvertently harm the very individuals it is meant to protect.

16) Adverting to the facts of the present case, the victim in her statement recorded during trial of the case has admitted having accompanied the petitioner out of her own will and volition. She has also admitted having entered into physical relationship with the petitioner out of her free

consent. It is also clear that there was a love affair between the victim and the petitioner, who is also a young man. Though the consent that may have been given by the victim to the sexual intercourse committed by the petitioner with her has no legal sanctity because she was minor at the relevant time, yet it does have bearing upon determination of the question relating to grant of bail. In such circumstances, if bail is refused to the petitioner, it would be a perversity of justice. This Court has to take into consideration the fact that it has come in evidence on record that even after arrest of the petitioner, the prosecutrix continues to live with his family and she has not come back to her parental house which shows that she is adamant on living with the petitioner. In these special circumstances of the case, a prima facie case for grant of bail is made out in favour of the petitioner.

17) Apart from the above, all the material witnesses of the prosecution have already been examined. It is only the police witnesses, the doctors and other formal witnesses who are to be examined now in the case. Therefore, even if the petitioner is admitted to bail, there is hardly any chance of his tampering with the prosecution evidence/witnesses.

18) For what has been discussed hereinbefore, the petition is allowed and the petitioner is admitted to bail subject to the following conditions:

- (i) *That he shall furnish personal bond in the amount of Rs.50,000/ with two sureties of the like amount to the satisfaction of the learned trial court;*
- (ii) *That he shall appear before the learned trial court on each and every date of hearing.*
- (iii) *That he shall not leave the territorial limits of the Union Territory of J&K without prior permission of the learned trial court;*
- (iv) *That he shall not intimidate or tamper with prosecution witnesses/evidence.*

19) The bail application shall stand **disposed** of.

Srinagar,
05.06.2026
"Bhat Altaf-Secy"



(SANJAY DHAR)
JUDGE

Whether the JUDGMENT is reportable: Yes/No