

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

Pronounced on: 18.08.2026

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

Bail App No.84/2026

MOHAMMAD ASHRAF SHEIKH ...PETITIONER(S)/APPELLANT

*Through: - Mr. Tahir Ahmad Bhat, Advocate
Mr. Bhat Shafi, Advocate.*

Vs.

UT OF J&K & ANR.

...RESPONDENT(S)

*Through: - Mr. Bikram Deep Singh, Dy. AG, with
Mr. Mohammad Younis, Assisting Counsel.*

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

JUDGMENT(ORAL)

1) The petitioner is seeking bail in a case arising out of FIR No.13/2025 for offences under Section 64 of BNS and Section 6/4 of POCSO Act registered with Police Station, Herpora Shopian, which is stated to be pending before the Court of Principal Sessions Judge, Shopian (hereinafter "the trial court").

2) As per the prosecution case, on 19.04.2025, PW-1, brother of the prosecutrix, lodged a report with the police that his sister, who is aged about 17 years, complained about pain in her back whereafter he along with his brother took their sister to hospital at Pulwama. Upon examination, the doctor

diagnosed that the prosecutrix is pregnant by nine months. The prosecutrix was taken into labour room of the hospital where she gave birth to a female child. In the report it was alleged that some unknown person has committed sexual intercourse with the prosecutrix.

3) On the basis of aforesaid report, FIR No.13/2025 for offences under Section 64 of BNS and 4 of POCSO Act was registered and investigation of the case was set into motion. During investigation of the case, DNA sample of the child born to the prosecutrix was taken. The prosecutrix and her new born daughter was taken to Child Welfare Committee, Shopian, whereafter she was questioned. The prosecutrix and the baby girl were handed over to the family of the prosecutrix. The date of birth certificate of the prosecutrix was obtained from the school and it was found that she was aged more than 18 years. The statement of the prosecutrix under Section 183 of BNSS was also recorded. In her statement, the prosecutrix alleged that one Arshad Manhas had committed sexual intercourse with her. However, later on she stated before the police that statement which she had made before the Magistrate on 21.04.2025 is not correct because she was not in proper health at that time and that she wants to get another statement recorded. On 02.05.2025, the second statement of the prosecutrix was recorded before

the Magistrate in terms of Section 183 of BNSS, in which she named petitioner, (Mohammad Ashraf Sheikh), Arshad Mohd. Khan, Rashid Yousuf and Ghulam Nabi @Irshad Molvi, as the persons who had committed sexual intercourse upon her. The aforementioned four accused were arrested by the police after getting them identified by the prosecutrix and their DNA samples were also collected. The DNA sample of the new born baby was also collected. The report with regard to DNA samples was also obtained. After investigation of the case, offences under Section 64 of BNS and 4/6 of POCSO Act were found established against the petitioner and co-accused.

4) The prosecutrix in her first statement recorded under Section 183 of BNSS on 21.04.2025 has stated that she developed relations with one Mohammad Arshad Manhas, who was working as a cook in the Darasgah where she was taking lessons of Quran. She further stated that initially on a couple of occasions she refused to develop relations with him but he compelled her to maintain relations. She further stated that the said person used to visit her house and despite her objection, he committed rape upon her, as a result of which she got pregnant. She narrated this fact to the said person on phone but he said that he is helpless in the matter, whereafter he stopped taking her calls and he also stopped coming to her

home. She further stated that after nine months and nine days, she gave birth to his daughter.

5) On 2nd May 2025, the prosecutrix made another statement before the Magistrate. In her said statement, she deposed that one day she was all alone in her house and the petitioner came over there and committed rape upon her. She further stated that she told the petitioner that she is unwell and thereafter he did come again to her house. She stated that afterwards accused Arshad Molvi, who was working as a cook in the Darasgah, asked him to keep relations with her. He also committed rape upon her. When she told him that she has got pregnant, he expressed his helplessness. Accused Rashid Ahmed came to her house and told her that Molvi Sahib is asking for a book. She gave the book to him, but he came back from the door and committed rape upon her. She further stated that while studying in Darasgah, there was one Molvi of Kokernag, who told her to clean the kitchen. When she was cleaning the kitchen, he came from behind and caught hold of her, whereafter he committed rape upon her. Thereafter she did not go to Darasgah. She stated that she did not tell anything to her family because Irshad Molvi was her teacher and he was Imam of the masjid and if she would have disclosed the incident to anyone, it would have defamed them. She further stated that now she is prepared to depose

against Irshad Molvi even if it would lead to his defamation and imprisonment because she has suffered indignation amongst the villagers.

6) It is pertinent to mention here that as per the DNA profiling report, the DNA sample of the petitioner matched with the DNA sample of the baby girl born to the prosecutrix, whereas DNA samples of other accused did not match with the DNA sample of the baby girl born to the prosecutrix.

7) After presentation of the challan, the learned trial court vide its order dated 0-4.09.2025, framed charges for offences under Section 64 of BNS and 4/6 of POCSO Act against the petitioner and co-accused. During trial of the case, the statement of the prosecutrix was recorded. In her statement, the prosecutrix turned hostile and denied having been raped by any of the four accused, including the petitioner herein. She stated that she does not know the accused nor does she remember anything about the incident. She stated that she felt some pain in her belly and she was taken to hospital by her brother where she was administered some medicine. She remained unconscious for three days, whereafter she regained her senses. On cross-examination by the Public Prosecutor, she stated that in her neighborhood there is a Darasgah but there is no person named Arshad Molvi over there. She denied that she was visiting that Darasgah to get

lessons of Quran. She stated that she does not know whether there was a cook by the name of Mohammad Arshad Manhas in the said Darasgah nor does she know the said person. She further stated that the statements made by her before the Magistrate were made by her at the behest of the police and not out of her free will and volition.

8) On cross-examination by the defence counsel, the prosecutrix stated that she was compelled by the police to make a false statement. She further stated that at the time of the incident, she was unmarried. She stated that she does not know Mohammad Rafiq Khatana or Mohammad Ayoub Mir, nor does she know the petitioner herein. She denied that any child was born to her. She stated that her age is more than 19 years. She also stated that the age written in her school certificate is not correct as her father had disclosed less age while admitting her to school and, as such, her date of birth recorded in the school certificate as 01.01.2007 is incorrect. She further stated that now she is married and her age is more than 18 years. She also stated that she has nothing against the accused persons.

9) The statement of PW-1 (the complainant), who happens to be the brother of the prosecutrix, has also been recorded. In his statement, he deposed that last year his sister, who was aged 18/19 years at the relevant time, complained of some

pain in her back. She was administered some of medicines and injections in the hospital and was discharged. The witness was declared hostile and was cross-examined by the prosecution. In his cross-examination, he stated that it is not correct that his sister was pregnant. The medical record in this regard is not correct and he has no knowledge about it. In his cross-examination by defence counsel, he stated that age of the prosecutrix was 19 years.

10) It is pertinent to mention here that the learned trial court has, vide order dated 02.04.2026, declined the bail application of the petitioner by, primarily, relying upon the DNA profiling report and distinguishing the case of the petitioner from the cases of other co-accused, against whom the DNA profiling report is not positive.

11) The petitioner has sought bail, primarily, on the ground that the prosecutrix and her brother have turned hostile during the course of trial and, as such, *prima facie*, it can be stated that the petitioner is not involved in the alleged crime. It has been contended that merely on the basis of DNA profiling report, which is subject to proof, the petitioner cannot be incarcerated indefinitely, particularly when most of the material witnesses have been examined by the prosecution. It has been contended that these aspects of the matter have not been taken into account by the learned trial

court while rejecting the bail application of the petitioner. It has further been contended that the prosecutrix has kept on changing her versions during investigation of the case and during trial of the case, which shows that the whole case is based upon falsehood. It has been contended that the prosecutrix has admitted that she was major at the time of alleged incident and, therefore, the offences under the POCSO Act are otherwise not made out against the petitioner.

12) The respondent-State has contested the bail application by filing its reply thereto, wherein it has been submitted that the petitioner is facing trial in heinous offences, as such, he is not entitled to bail. It has been submitted that the petitioner has exploited a minor child and has violated her body and, therefore, he does not deserve leniency. It has also been contended that DNA profiling report has established that the petitioner is the biological father of the child delivered by the prosecutrix and said evidence is highly reliable and, therefore, the petitioner is not entitled to bail. It has also been contended that if the petitioner is granted bail at this stage, it would prejudice the fair trial of the case.

13) It is pertinent to mention here that the victim was made a party to the present proceedings, but despite service, no one appeared on her behalf.

14) Heard and considered.

15) So far as the principles governing grant or refusal of bail are concerned, the same have been elucidated in a large number of judgments rendered by the Supreme Court and this Court. The principles laid down in these judicial precedents can be summarized as under:

- (i) *The gravity of the offence and the nature of the accusation including the frivolity of punishment in a case of conviction;*
- (ii) *The position and status of the accused vis-à-vis the victim and the witnesses;*
- (iii) *The likelihood of the accused fleeing from justice;*
- (iv) *The possibility of the accused tampering with the evidence and/or witnesses and obstructing the course of justice;*
- (v) *The possibility of repetition of the offence;*
- (vi) *Prima facie satisfaction of the Court in support of the charge including frivolity of the charge;*
- (vii) *Stage of the investigation;*
- (viii) *Larger interest of the public or the State;*

16) When it comes to offences punishable under a special enactment, such as, POCSO Act, the provisions contained in Sections 29 and 30 of the said Act are also to be borne in mind. Section 29 raises a presumption of commission of an offence under Sections 3, 5, 7 and 9 of the POCSO Act against a person who is prosecuted for commission of the said

offence, unless contrary is proved. Similarly, Section 30 raises a presumption with regard to existence of culpable mental state against an accused in prosecution of any offence under the Act which requires a culpable mental state on the part of the accused. However, the accused has a right to prove the fact that he had no such mental state.

17) Coming to the facts of the present case. It is correct that involvement of the petitioner in the alleged crime has been found after the investigation of the case and charges against him have also been framed. Thus, there is a statutory presumption of guilt operating against him. However, as already stated, the statutory presumption of guilt, which is triggered by operation of Section 29 of the POCSO Act, is rebuttable in nature. Therefore, it is open to an accused to bring to the notice of the Court the material or lack of it to show that the foundational facts giving rise to the presumption are *prima facie* not established in the case or that evidence led during the trial of the case rebuts the presumption operating against him. Thus, an accused will be well within his rights to persuade the Court on the basis of the circumstances that may be established during cross-examination of the witnesses conducted during trial of the case or on the basis of defence evidence, that the presumption of guilt operating against him in view of the provisions

contained in Section 29 of the POCSO Act stands rebutted. It is also to be borne in mind that there is no statutory bar to grant of bail in a case involving offences under the POCSO Act and each case has to be considered on its peculiar facts and circumstances.

18) In the present case, as per report of the DNA profiling, there appears to be strong evidence that the petitioner is the biological father of the child born to the prosecutrix and it is also a settled law that DNA report is a substantive piece of evidence. However, the same is subject to the proof of the manner the sample was collected, preserved, transmitted and analyzed. The DNA report, undoubtedly, constitutes strong incriminating scientific material connecting the accused with the biological material collected from the baby girl born to the prosecutrix. However, at the stage of consideration of bail application, the said circumstance cannot be viewed in isolation. It has to be noted that the prosecutrix in her statement before the trial court has not attributed the alleged sexual assault to the petitioner and has rather denied his involvement. The DNA evidence may, *prima facie*, establish a biological sexual contact, but it, by itself does not establish the absence of consent, which is an essential element of offence alleged. The evidentiary value and effect of DNA

profiling report vis-à-vis the testimony of the prosecutrix would require appreciation of evidence at trial.

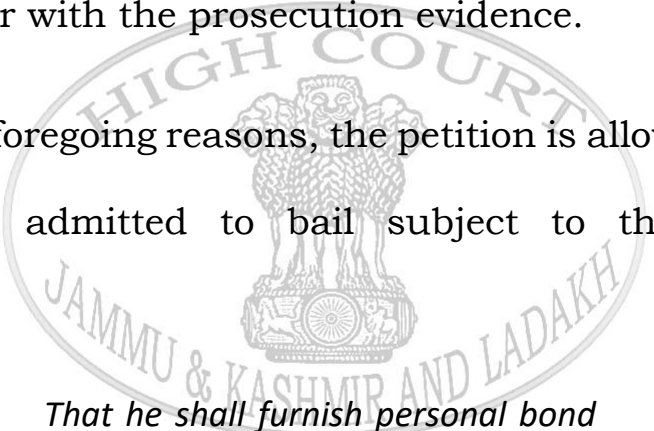
19) In the context of the present case, even though the date of birth of the prosecutrix has been shown as 01.01.2007, which means she was just below 18 years of age at the time when she became pregnant but in her statement made before the trial court, she has categorically stated that she was about 19 years of age at the time of making statement and above 18 years at the time of alleged incident. Even in her statement recorded before the Magistrate during investigation of the case, she has stated that she was above 18 years of age. The brother of the prosecutrix has stated that the prosecutrix was major at the time of alleged incident and her age disclosed in her school certificate by her father is not the correct age. This fact has been confirmed by the prosecutrix in her statement.

20) Thus, there is material on record which contradicts the date of birth of the prosecutrix as shown in her school leaving certificate. The material on record makes it a debatable issue as to whether the prosecutrix had attained the age of majority at the time when the alleged incident took place. This aspect of the matter has to be taken into account, at least for the limited purposes of deciding the bail application. It is also to be noted that even if it is assumed that the prosecutrix was

sexually exploited by the petitioner, the fact that she did not disclose it to anyone till she delivered a baby girl coupled with the fact that her age has become a debatable issue, keeping in view her statement and the statement of her elder brother, a *prima facie* case for grant of bail in favour of the petitioner is made out.

21) Apart from the above most of the material witnesses including the prosecutrix and her brother have been examined by the trial court. Therefore, in the event the petitioner is enlarged on bail there is hardly any chance for him to tamper with the prosecution evidence.

22) For the foregoing reasons, the petition is allowed and the petitioner is admitted to bail subject to the following conditions:

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- (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 till conclusion of the trial.*
 - (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.*

23) Observations made hereinabove shall remain confined to the decision of the instant application only and shall not be construed as expression of an opinion on the merits of the case.

(Sanjay Dhar)
Judge

SRINAGAR

18.08.2026

“Bhat Altaf-Szezy”

Whether the **judgment** is reportable: **YES/NO**

