

HIGH COURT OF JAMMU, KASHMIR & LADAKH AT JAMMU

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Bail App No. 233/2026

Rajat Kumar

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

Through: Ms. Rozina Afzal, Sr. Adv. with
Ms. Ishrat Bukhari, Adv.

vs

U. T. of J&K

..... Respondent(s)

Through: Mr. Suneel Malhotra, GA

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

ORDER
12.10.2026

1. The petitioner, through the medium of present petition, is seeking bail in anticipation of his arrest in a case arising out of FIR bearing No. 110/2022 for offence under section 376 IPC registered with Police Station, Billawar. It is pertinent to mention here that the investigation pertaining to the aforesaid FIR has been completed and the charge sheet has been laid before the court of Principal Sessions Judge, Kathua. After investigation, besides offence under section 376 IPC, offences under sections 4 and 6 of the Protection of Children from Sexual Offences(POCSO), Act have also been found established against the petitioner, as the prosecutrix was found to be minor.
2. As per case of the prosecution, the prosecutrix filed a written report with the Police on 16.08.2022 alleging therein that on the said date at about 1.30 PM when she had gone to her maize fields with a basket of dung, the

petitioner pounced upon her, gagged her mouth and forcefully raped her in the maize field. It was also stated by the prosecutrix in her report that her mother has deserted her as well as her father and that she is living with her grandmother. It was alleged in the report that on the date of occurrence, her grandmother had gone to Dharamkot and she was all alone in her house at Village Kohag.

3. On the basis of the aforesaid report, the Police registered the FIR and started investigation of the case. During the investigation of the case, the statement of the prosecutrix under section 164 Cr.P.C. was recorded by the learned Magistrate. In her statement, she substantiated the allegations made by her in the report. Her date of birth certificate was obtained by the Police from the school where she had studied and it was found that her date of birth is 15.01.2005. Thus, she was minor at the time of alleged occurrence. She was subjected to medical examination and the statements of witnesses under section 161 Cr.P.C. were recorded.
4. It is pertinent to mention here that in the report lodged with the Police, the prosecutrix has mentioned the name of the offender as Laddo S/o. Jagdish Raj, R/o. Village Kohag, Tehsil Billawar, District Kathua. During the course of investigation, the name of the offender was found to be Rajat *alias* Laddo S/o. Jagdish Raj, Caste Bhagat R/o. Village Kohag, Tehsil Billawar, District Kathua(the petitioner herein). In the statement made by the prosecutrix before the learned Magistrate under section 164 Cr.P.C, she disclosed the name of the offender as Ashok *alias* Laddo, a resident of Village Kohag. It would not be out of place to mention here that as per

statements of the witnesses recorded under section 161 Cr.P.C, copies whereof have been placed on record by the petitioner, the offender has been identified as Rajat Kumar *alias* Laddo S/o. Jagdish Raj, Caste Bhagat, resident of Village Kohag(the petitioner herein).

5. As per the charge sheet, the offender after the commission of the crime, absconded and his whereabouts were traced in whole of the Union Territory of Jammu and Kashmir but he could not be apprehended. The Investigating Agency laid the challan before the learned Sessions Judge with a prayer that the accused may be declared as proclaimed offender. It appears that the learned Sessions Judge, upon presentation of challan before him and after taking into account the material and the evidence produced by the Investigating Agency before him, declared the accused/petitioner as proclaimed offender and directed issuance of general warrants of arrest against him. Proceedings under section 335 of the Bharatiya Nagarik Suraksha Sanhita(BNSS), 2023 have been initiated against the petitioner/accused in terms of order dated 04.06.2026.
6. The petitioner has sought bail in anticipation of his arrest, primarily on the ground that there is a serious dispute about the identity of the accused in the present case, as according to the prosecutrix, name of the offender is Laddo and not Rajat. It has been further contended that in her statement recorded under section 164 Cr.P.C, the prsecutrix has named Ashok as the offender and he has not nominated the petitioner as the offender. It has been contended that this inconsistency in the identity of the accused makes a strong case for grant of anticipatory bail in favour of the petitioner. It is

being contended that merely because the petitioner has been declared as an absconder, he cannot be denied the concession of anticipatory bail.

7. It has also been contended that because the petitioner is presently residing outside the Union Territory of Jammu and Kashmir, as such, it will not be convenient for him to approach the court of learned Sessions Judge, Kathua for grant of anticipatory bail and that there are compelling circumstances which have prompted the petitioner to approach this Court directly.
8. I have heard learned Senior Counsel appearing for the petitioner and I have also gone through the material on record.
9. Before considering merits of the case, it would be apt to determine the issue as to whether in the facts and circumstances of the present case, application of the petitioner for grant of anticipatory bail can be entertained by this Court directly without the petitioner having approached the court of first instance.
10. In the above context, it is to be noted that the Supreme Court has in the case of **Jagdeo Prasad v. State of Bihar 2025 Online SC 2108**, held that even though scheme of BNSS provided concurrent jurisdiction to the High Court and Court of Sessions for entertaining applications for anticipatory bail, the High Court should always encourage exhausting concurrent remedy before the Sessions Court prior to directly interfering itself.
11. Again the Supreme Court in the case of **Mohammed Rasal. C another v State of Kerala and another, 2025 SCC Online 2728** has observed that ordinarily an accused should first approaches the court of Sessions before

involving the jurisdiction of the High Court and departure from such course must be founded as special circumstance. It is true that the rule of not entertaining an application for grant of anticipatory bail by the High Court directly is not inflexible. In special circumstances, a departure can be made from such rule, if the circumstances justify approaching the High Court directly.

12. Coming to the facts of the present case, the petitioner has not pleaded any circumstance much less a special circumstance that would persuade this Court to entertain the bail application directly. Merely because, the petitioner may be presently residing at a place outside the Union Territory of Jammu and Kashmir is not a good enough ground to approach the High Court directly. In fact, the petitioner has not even disclosed his present address in the petition. In the affidavit accompanying the petition as also in the petition, the petitioner has disclosed his address as son of Jagdish Raj R/o. Village Kohag, Tehsil Billawar, District Kathua. In such circumstances, when no material has been brought before this Court to show that the petitioner has any compelling reason to approach this Court directly, his bail application cannot be entertained by this Court directly.
13. Apart from the above, the fact that the petitioner has been declared absconder and has not joined the investigation during all these years, becomes a strong reason to decline the concession of anticipatory bail in his favour.
14. It has been contended by the learned Senior Counsel appearing for the petitioner that no notice was given to the petitioner by the Investigating

Agency, as such, there was no occasion for him to appear before the Investigating Agency. In this regard, it is to be noted that the Investigating Agency, besides producing material before the learned trial court, also recorded statements of the Police Officials, who had launched search of the petitioner. On the basis of this material, a satisfaction has been recorded by the learned Sessions Judge that the petitioner has absconded and that he has not responded to the notices issued to him by the Investigating Agency. In the face these circumstances, the plea of the petitioner that he was not knowing about the registration of the case against him, cannot be accepted.

15. The Supreme Court has time and again, held that if anyone is declared as an absconder/proclaimed offender, he is not entitled to relief of anticipatory bail. In this regard, it would be apt to refer to the following observations made by the Supreme Court in the case of **Lavesh v. State (NCT of Delhi), (2012) 8 SCC 730:**

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled the relief of anticipatory bail.”

16. Again the Supreme Court has, in the case of **State of Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171**, held that if anyone is declared absconder/proclaimed offender, he is not entitled to relief of anticipatory

bail. The Court, after noticing the provisions contained in section 438 Cr.P.C, observed as under:

“The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty..”

17. The Supreme Court in the case of **Prem Shankar Prasad v. State of Bihar and another, (2022) 14 SCC 516**, has held that where an accused is absconding and concealing himself to avoid service of warrant of arrest and the proceedings under sections 82 and 83 of the Cr.P.C. have been initiated against him, the relief of anticipatory bail cannot be granted in his favour. The aforesaid position of law has been consistently followed by the Supreme Court and recently in the case of **Srikant Upadhyay and others v. State of Bihar and another 2024 INSC 202**, the Supreme Court has held that when a warrant of arrest or proclamation is issued, the applicant is not entitled to invoke extra ordinary power. The Court has further held that it is only in extreme exceptional circumstances in the interest of justice that the Court would grant pre-arrest bail, but a person continuously defying orders and keep absconding is not entitled to concession of bail. Thus on this ground also, the petitioner is not entitled to concession of pre-arrest bail.
18. In the present case, even though there is some confusion about the name of the accused, inasmuch as in the report, the name of the accused is shown as Laddo whereas in the statement recorded under section

164Cr.P.C, the prosecutrix has mentioned the name of the offender as Ashok *alias* Laddo. A closer look at the material collected by the Investigating Agency would reveal that from the statements of the witnesses recorded during the course of investigation, identity of the offender has been established as Rajat *alias* Laddo S/o. Jagdish Raj, R/o. Village Kohag. These particulars clearly match with the particulars of the petitioner. So there are no exceptional circumstances peculiar to the present case that would persuade this Court to exercise its jurisdiction to grant anticipatory bail in spite of the petitioner having been declared as an absconder.

19. For the foregoing reasons, I do not find any merit in this petition. Accordingly, the same is dismissed.

(SANJAY DHAR)
JUDGE

Jammu
12.10.2026
Rakesh PS

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