

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

Reserved on: 23.07.2025

Pronounced on: 01.08.2025

Bail App No.84/2025

MANZOOR AHMAD KHURROO

... PETITIONER(S)

*Through: - Mr. M. Ashraf Malik, Advocate, with
Ms. Syed Soliha Jan, Advocate,
Mr. Salfi Izhar, Advocate.*

Vs.

UT OF J&K AND ANOTHER

...RESPONDENT(S)

*Through: - Mr. Ilyas Nazir Laway, GA-for R1.
Ms. Fizu Jan, Advocate-for R2.*

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

JUDGMENT

1) The petitioner has invoked jurisdiction of this Court under Section 483 of BNSS seeking bail in a case arising out of FIR No.223/2024 for offences under Sections 137(2), 64, 89 of BNS and 5(ii), 6 of POCSO Act registered with Police Station, Anantnag.

2) As per the prosecution case, on 17.12.2024, father of the prosecutrix lodged a written report with Police Station, Anantnag, alleging therein that his daughter, who is a student of 10th class, is undergoing treatment in Sheerbagh Hospital, Anantnag, and that it has been revealed that she is pregnant though she is still unmarried. It was further alleged that some unknown person has established illicit relation with the prosecutrix and committed rape upon her, whereafter the said person has made her to take medicines for terminating her pregnancy. On the basis of this

report, the FIR came to be registered and investigation was set into motion.

3) During the course investigation, the prosecutrix was subjected to medical check-up and her DNA sample was collected which was sent to FSL, Srinagar, for examination. Upon questioning, the prosecutrix disclosed that the petitioner, who is running a hotel near DC Office, Anantnag, in which her father is also working, used to visit their house. She further disclosed that about two months back, the petitioner/accused came on a motorcycle and offered to give her lift to her home while she was coming back from her school. She also stated that when she refused to take the lift, the petitioner/accused forcibly made her to sit on the motorcycle and took her to his house at Mehman Mohalla, where she was subjected to forcible sexual intercourse. The statement of the prosecutrix under Section 183 of BNSS was recorded before the Magistrate. The statements of other witnesses were also recorded by the prosecution. After investigation of the case, offences under Section 137(2), 89, 64 of BNS and 5(ii) and 6 of POCSO Act were found established against the petitioner and the challan was laid before the trial court.

4) Vide order dated 10.03.2025 passed by the learned trial court, charges for the aforesaid offences were framed against the petitioner. The statement of the prosecutrix as well as statements of her parents, PW-1 and PW-4 as also statement of the doctor, PW-6, have been recorded during trial court of case.

5) It appears that the petitioner had approached the trial court for grant of bail but the same has been rejected by the trial court in terms of order dated 19.05.2025.

6) It has been contended by the petitioner that the prosecution witnesses including the prosecutrix have not supported the allegations made in the charge sheet and, as such, it can safely be stated that the petitioner is not involved in the alleged crime. It has been further submitted that as per the evidence led before the trial court, the age of the prosecutrix at the relevant time was more than 18 years, as such, the provisions of POCSO Act could not have been invoked in the present case. It has further been contended that all the material witnesses of the prosecution have already been examined and if the petitioner is admitted to bail, there is no possibility of his tampering with the prosecution witnesses.

7) The bail application has been resisted by the respondent Investigating Agency by filing a reply thereto. In the reply, besides narrating the allegations made in the chargesheet against the petitioner, it has been submitted that the petitioner is involved in a heinous and grave offence, as such, he is not entitled to concession of bail. It has been submitted that admitting the petitioner to bail in the present case would be prejudicial to the public interest.

8) I have heard learned counsel for the parties and perused the material on record.

9) Before coming to the merits of the rival submissions made by the parties, it would be apt to notice the principles governing the

grant or refusal of bail. The same have been elucidated in a number of judgments rendered by the Supreme Court and this High Court.

These principles may be summarized as under:

- (i). *The nature and gravity of the accusation and the exact role of the accused;*
- (ii). *The position and status of the accused vis-à-vis the victim/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). *The 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;*

10) In the instant case the petitioner has also been booked for offence under POCSO Act. Therefore, while considering his bail application, we have to keep in mind the provisions contained in the said Act, particularly those contained in Section 29 and 30 of the said Act, which read as under:

“29. Presumption as to certain offences: *Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.*

30. Presumption of culpable mental state. (1) *In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*

(2) *For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist*

beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.--In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

11) From a perusal of Section 29, as quoted above, it is clear that where a person is prosecuted for committing or abetting or attempting to commit any offence under certain provisions of the Act, a presumption arises that such person has committed the said offence. Similarly, Section 30 raises a presumption of culpable mental state against an accused who is prosecuted under the said Act, which in other words means that once a person is prosecuted under certain offences under the POCSO Act, the normal presumption of innocence attached to an accused does not come into play while considering his bail application but then there is no statutory bar to the grant of bail in a case where the accused is prosecuted for offences under a POCSO Act. Each case has to be decided on its own facts and circumstances by applying the well-recognized principles for grant of bail as set out by the judicial precedents from time to time.

12) In the light of the aforesaid legal position, let us now analyse the facts of the instant case. The prosecution case is based upon the statement of the prosecutrix recorded under Section 183 of BNSS during investigation of the case. In the said statement, she has clearly stated that the petitioner, who used to visit her house, one day, while she was coming back from her school, made her to sit on his motorcycle and took her to his home at Mehman Mohalla, DC

Office, Anantnag, where she was subjected to sexual assault. It is further case of the prosecution that the petitioner made the prosecutrix to take some tablets, as a result whereof her pregnancy got terminated. The age of the prosecutrix, as per case of the prosecution, at the time of the incident was between 15 – 16 years.

13) The prosecutrix, while making her statement before the court during trial of the case, has turned hostile and has denied having been subjected to sexual assault by the petitioner. However, in answer to a question put by the Court, she has admitted that she is trying to shield the petitioner because he happens to be their family friend and that the petitioner has committed a wrong with her. However, when she was cross-examined by the defence counsel, she again turned volte face and claimed that the petitioner had only touched her with his hands and that the police has framed a false case against the petitioner. The parents of the prosecutrix, PW-1 and PW-4, have also, during their cross-examination, stated that the doctor had never told them that the prosecutrix is pregnant. They further stated in their cross-examination that the petitioner has not committed rape upon the prosecutrix.

14) On the basis of the aforesaid evidence, it has been contended by learned counsel for the petitioner that case of the prosecution as against the petitioner stands knocked down in the face of the nature of statements made by most material witnesses to the alleged crime. It has been contended that having regard to the aforesaid nature of evidence, denying concession of bail to the petitioner would be grave injustice to him.

15) Learned counsel for the petitioner, while referring to the statements of the prosecutrix and her parents, has contended that it has come to the fore that the prosecutrix, at the relevant time, was aged more than 18 years. In this regard, the learned counsel has referred to the statement of the prosecutrix, in which she has disclosed her age as 19 years. He has also referred to her statement in cross-examination, in which she has stated that her age is about 21/22 years and that age of her sister, who is elder to her by three years, is 25 years. The learned counsel has also referred to the statement of mother of the prosecutrix, PW-4, who has stated that age of the prosecutrix is 22-23 years and the age of her elder daughter is 25 years. Reference has also been made to the statement of father of the prosecutrix, PW-1, who has made a similar statement in his cross-examination.

16) The question as to what was the age of the prosecutrix at the relevant time is a matter which would ultimately be determined after trial of the case in the light of the aforesaid statements of the prosecution witnesses as also the statement of Headmaster, Government High School, Mir Danter who has issued the certificate indicating date of birth of the prosecutrix. The statement of the Headmaster is yet to be recorded by the trial court but one thing is clear that the defence has succeeded in creating a doubt about the actual age of the prosecutrix at this stage and credibility of the prosecution case has, prima facie, come under cloud having regard to the nature of statements made by the prosecutrix and her parents.

17) Without commenting upon merits of the contentions raised by the learned counsel for the petitioner on the aforesaid aspects of the matter, lest it may prejudice the case of the prosecution, it appears that there is some substance in the arguments advanced by learned counsel for the petitioner. Thus, prima facie, the petitioner has succeeded in rebutting the presumption of culpability that has triggered against him with the presentation of the challan before the trial court.

18) Apart from the above, a perusal of the trial court record reveals that the statement of the prosecutrix as well as statements of her parents have already been recorded. It is only the statements of formal witnesses which are yet to be recorded. Thus, if the petitioner is enlarged on bail, there is absolutely no chance of the witnesses getting intimidated or there being any apprehension of tampering with the prosecution evidence. The prosecution has not placed on record any material to show that the petitioner is a habitual offender or that in case he is admitted to bail, he is likely to repeat similar offences.

19) For the foregoing reasons, the application 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 one surety of the like amount to the satisfaction of the learned trial court;*
- II. That he shall appear before the trial court on each and every date of hearing;*

III. That he shall not leave the territorial limits of Union Territory of J&K without prior permission of the learned trial court;

IV. That he shall not tamper with prosecution witnesses.

20) 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.

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

(Sanjay Dhar)
Judge

Srinagar,
01.08.2025
“Bhat Altaf-Secy”

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

