

(2023) 12 J&K CK 0043

In the Jammu And Kashmir High Court

Case No : Bail Application No. 11 Of 2022 (O&M)

Bharat Bushan

APPELLANT

Vs

Union Territory Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 16-12-2023

Acts Referred:

Indian Penal Code, 1860 — Section 376

Citation : (2023) 12 J&K CK 0043

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : A. P. Singh, Nikhil Verma, Mohd. Irfan, Rajnish Raina

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. The petitioner has filed the present petition for grant of bail in the charge sheet, titled "UT of J&K vs. Bharat Bushan" arising out of FIR No. 0216/2021 dated 07.11.2021 registered with Police Station, Reasi for commission of offence under Section 376 IPC by the respondent No. 1 at the instance of the respondent No. 2. It is stated that the petitioner and respondent No. 2/complainant were in relations and the respondent No. 2 had entered into marriage with the petitioner out of her own free will and accordingly, a marriage agreement was executed between them at Reasi, but the parents of respondent No. 2 were against the marriage of respondent No. 2 with the petitioner and as such, a false and frivolous FIR was registered against the petitioner by concealing the fact that respondent No. 2 had married with the petitioner. This petition was filed by the petitioner on 17.01.2022. The petitioner has also placed on record charge sheet filed against him and in the charge sheet, the date of arrest has been reflected as 02.12.2021.

2. The official respondent has filed the response, stating therein that an application was filed by respondent No. 2 thereby stating that there was a temple

of Baba Ballo in the village Kaura, Tehsil Katra where many devotees used to come for prayers. The respondent No. 2 was also having the faith in the said temple and would often visit for prayers. The petitioner used to act as a Pandit in the temple but was having bad intention towards her. On 25.09.2021, when respondent No. 2 went for prayer in the temple, the petitioner asked her to wait for her turn. When all the devotees left the temple, he stopped her to bless after completing prayers. When she was all alone, the accused took her to another room on the pretext of giving Prasad and thereafter he sexually assaulted and threatened her to cut her throat, if she raised hue and cry. On receipt of this application, FIR bearing No. 0216/2021 for commission of offence under Section 376 IPC was registered. The investigation established the commission of offence under Section 376 IPC against the petitioner and the charge sheet was filed before the Court on 23.12.2021.

3. Learned counsel for the petitioner vehemently argued that the petitioner has been in custody for the last more than two years and even the statement of the prosecutrix has also been recorded. He laid much stress that from the statement of the prosecutrix, no offence under Section 376 IPC is made out.

4. Per contra, learned counsels for the respondents vehemently argued that the petitioner is involved in the commission of an heinous offence, as such, he is not entitled to any concession of bail.

5. Heard and perused the record.

6. It is admitted fact that the petitioner was arrested on 02.12.2021 and the charge against the petitioner in respect of the commission of offence under Section 376 IPC was framed on 04.03.2022. The bail application filed by the petitioner prior to the framing of charge was rejected by the Court of learned Principal Sessions Judge vide order dated 11.01.2022. After framing of the charge, the prosecution has examined the prosecutrix i.e. the respondent No.2 and one more witness. The prosecution has cited as many as eight witnesses. The petitioner has been in custody for the last more than two years and the prosecution has not been able to conclude the evidence within the period mentioned above. The other witnesses are the parents of the prosecutrix.

7. The star witness has already been examined and the other witnesses are formal in nature. The contention of the petitioner that no offence under Section 376 IPC is made out against the petitioner as the respondent No. 2 had entered into marriage agreement with the petitioner, cannot be appreciated at this stage, as it is for the trial court to examine the defence of the petitioner but equally true is that the defence raised by the petitioner cannot be termed as imaginary.

8. Be that as it may, as the petitioner has been in custody for the last more than two years and the statement of the prosecutrix has been recorded and other witnesses are formal in nature, therefore, this Court deems it appropriate to grant bail to the petitioner on the following terms and conditions:

i) Subject to petitioner's furnishing of bail bonds with two solvent sureties to the tune of Rs. 50,000/- each to the satisfaction of the trial court and personal bond of the like amount.

ii) He shall appear before the trial court on each and every date of hearing and shall not contact with any of the witnesses, either physically or through any other mode during the trial of the case.

iii) He shall not leave the territorial jurisdiction of the District Reasi without permission of the trial Court.

9. Disposed of.