

(2022) 01 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : Bail Application No. 95 Of 2021

Manzoor Ahmad Wani

APPELLANT

Vs

Union Territory Of JK

RESPONDENT

Date of Decision : 31-01-2022

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 342, 354, 376D, 392, 506
Code Of Criminal Procedure, 1973 — Section 164, 173, 342

Citation : (2022) 01 J&K CK 0003

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Ayoub Bhat, Asifa Padroo, Wani Manzoor

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. This is an application for grant of bail to the petitioner arrested in connection with FIR No. 197/2018 registered in Police Station Kulgam for

offences under Sections 342/392/376-D RPC.

2. The FIR, after investigation, has culminated into a final report under Section 173 Cr.P.C which is pending trial before the Court of learned

Additional Sessions Judge/ Presiding officer Fast Track Court, Kulgam (the trial court). The petitioner has pleaded not guilty to the charges for the

aforesaid offences framed by the trial Court. The prosecution has led its evidence and after conclusion of the evidence of the prosecution, statement

of the petitioner under Section 342 Cr.P.C also stands recorded.

3. It is submitted by the learned counsel for the petitioner as well as the respondents that even the defence evidence is at the verge of conclusion. The

petitioner, after substantial portion of the prosecution evidence had been led, filed an application for bail before the trial Court on 21.10.2019 and the same was disposed of by the trial Court on 28.08.2021. The bail plea of the petitioner was rejected by the trial Court primarily on the ground that the offences with which the petitioner was charged, were heinous in nature and that the statement of the prosecutrix, made during the trial, had prima facie, targeted the petitioner for commission of offences.

4. Feeling dissatisfied and aggrieved of the order dated 28.08.2021, rejecting the bail application of the petitioner, the petitioner is before this Court

with a fresh application seeking bail, primarily on the ground that the evidence of the prosecution, even if read in its entirety against the petitioner, does

not make out the offence with which the petitioner has been charged by the trial Court. The petitioner, being in incarceration since the date of his

arrest in the year 2018, deserves to be released on bail pending conclusion of the trial.

5. The bail plea of the petitioner is vehemently opposed by the respondents. It is submitted that on 20.12.2018 at early hours of the day Police Station,

Kulgam, received a written docket from a victim stating therein that two years back, while she was studying in Rajasthan, she met the accused and

developed relations with him and finally they decided to marry each other. The matter was brought to the notice of their parents and they also agreed

for the marriage. However, after some days the victim came to know that the accused was trying to get him engaged with some other girl.

On 20.12.2018 the victim claimed that she approached the accused and his family members and on reaching the spot the accused with the assistance

of Mohd Amin Wani, Farooq Ahmad Wani, Bashir Ahmad Bhat, Safia Jan and Manzoor Ahmad Wani, all residents of Tarigam, Kulgam, subjected

her to ruthless beating, torn her clothes and also outraged her modesty. The victim also made an allegation that her golden ornaments too were taken

away forcibly by the said individuals. On this information FIR No. 197/2018 under Sections 354, 392, 506 RPC came to be registered in Police Station

Kulgam and investigation was set into motion. It is claimed by the respondents that during the course of investigation the Investigating Officer visited

the place of occurrence, prepared the site plan and recorded the statements of the witnesses including the statement of the victim under Section 164

Cr.P.C before the concerned Judicial Magistrate. On the basis of the statement of the victim recorded under Section 164 Cr.P.C, the offence under

Section 342 and 376 D were added, however, offences under Section 354 and 506 were dropped. On completion of the investigation and the requisite

formalities envisaged under law, the challan was produced before the trial Court. The trial Court framed the charges against the petitioner for

offences under Section 342 and 376 D RPC. It is contended by the respondents that now when the entire prosecution evidence has been led and the

defence evidence is virtually at the verge of completion, it would not be proper to consider the bail plea of the petitioner. It is submitted by the learned

counsel for the respondents that in case what is argued by learned counsel for the petitioner has to be accepted, the petitioner would be entitled to

acquittal and since the trial is at the verge of completion, it would be proper to leave it to the trial Court to appreciate the evidence and pass

appropriate orders after hearing rival contentions.

6. Having heard learned counsel for the parties and perused the material on record, I am of the view that it may not be appropriate at this stage to

consider the plea of petitioner for bail when the trial is almost complete. Anything said or done by this Court by reference to the evidence recorded

during the trial is bound to prejudice the trial Court.

7. It is trite law that at the time of considering the grant of bail to the accused in a pending trial there should be no meticulous examination of the

statements of the witnesses nor it is prudent for the Court to comment on the veracity or otherwise of the statements of the prosecution witnesses as

it may influence the trial and the ultimate decision that has to be taken by the trial Court.

8. Learned counsel for the petitioner vehemently contended and urged this Court to examine and evaluate the statements of the prosecutrix and other

prosecution witnesses to find out the veracity of the charges against the petitioner. He submitted that registration of FIR against the petitioner was

only on account of inability of the petitioner to accede to the demand of marriage made by the victim and her family. He contended that in the first

information that was lodged before the Police by way of written application, the victim made no allegation of rape and the charge of rape was a

subsequent improvement made by the victim when her statement under Section

164 Cr.P.C was recorded before the Judicial Magistrate. He argued

that the statement of the prosecutrix is, therefore, required to be evaluated in the aforesaid context.

9. As already noted above, the trial in the instant case has reached its final stage and any comment made by this Court on the veracity or otherwise of

the statement of the prosecutrix or other prosecution witnesses may influence the trial. The plea of the petitioner, if it has substance, may result in his

acquittal after the trial is concluded and verdict is pronounced by the trial Court. This Court, at this stage, does not think it proper and prudent to have

a meticulous examination of the evidence on record even for the purpose of coming to the prima facie view as to whether the petitioner can be held

guilty of the offences with which he is charged or not. I would have done so, had this application come before me at a stage when the trial was at its

infancy or proceeded to some extent. Unfortunately when the application came up for consideration, the trial had reached its final stage and that fact

alone dissuades me to meticulously examine the evidence and record even for the purposes of making prima facie opinion about the guilt or otherwise

of the petitioner. I am in agreement with the learned counsel for the petitioner that the application of the petitioner ought not to have been rejected by

the trial Court on the mere ground that the offences, with which the petitioner was charged, were heinous in nature. The trial Court could have looked

into the evidence recorded before it and evaluated the same with a limited purpose of finding out as to whether the petitioner was prima facie guilty of

committing the offences or not. Admittedly the trial Court has not done so.

10. Aside from that, the trial Court has not considered the plea of the petitioner in right perspective and in accordance with the laid down parameters

for grant of bail. However, as noted above, looking to the stage where the trial has reached, I do not think it just and proper to consider the bail plea of

the petitioner as the same would require meticulous examination of the prosecution evidence on record and, therefore, offering of comments on the

veracity or otherwise of the statements of the prosecution witnesses recorded during the trial, is avoided only to ensure that the trial is not prejudiced

in any manner and the trial Court is in a position to deliver its verdict on the basis of his independent evaluation of the evidence on record. The

dismissal of this application, I am of the firm view, is not likely to prejudice the

petitioner in any manner for the trial is virtually at the verge of conclusion and the pleas of the petitioner, those were raised before me, if accepted by the trial Court, may result in his acquittal. However, with a view to meet the ends of justice, I deem it appropriate to direct the trial Court to proceed with the trial expeditiously and conclude the same with reasonable despatch.

11. As a result, this bail application is rejected and the trial Court is requested to conclude the trial, which, as stated by learned counsel for the parties, is at its final stage, within a period of six weeks from the receipt of a copy of this order. It is further provided that if for any reasons whatsoever it is not possible for the trial Court to conclude the trial within the aforesaid period, the petitioner shall be free to approach this Court by way of fresh application for bail.