



Sr. No. 110

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU****Bail App No. 139/2025**
CrlM No.787/2025Reserved On: 10.02.2026
Pronounced On: 19.02.2026
Uploaded On: 19.02.2026*Whether the operative part or
full judgment is pronounced-**Full Judgment***

1. **Joginder Singh**, Age 60 years
S/O Sh. Singara Singh,
R/O Ghaunpur,
Tehsil & District Amritsar.
2. **Sawarn Singh**, Age 39 years
S/O Inder Singh
R/O Village Dhand Taran Taran
District Amritsar

.....Applicant(s)/Petitioner(s)

Through: Mr. Mohd. Aleem Beg, Advocate.

vs

1. **Union Territory of J&K** through
Superintendent District Jail, Kathua.
2. Station House Officer,
Police Station, Samba.
3. Garu Ram S/O Mangat Ram,
R/O Arazi Samba,
Tehsil and District Samba
4. XYZ (minor) through
her natural guardian/parents

..... Respondent(s)

Through: Mr. Vishal Bharti, Dy. AG.
Respondent No.3 in person.**CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY , JUDGE****ORDER**

01. Applicants, through the medium of present bail application moved U/S 483 BNSS seek grant of bail, in a case pending before Trial Court at Samba, arising out of FIR No.28/2024 registered on 24.01.2024 at P/S Samba, for the



commission of offences punishable under Sections 363/366/120-B/212 IPC, read with Sections 3/4/17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

02. Facts as pleaded in the application, leading to the filing of the petition are that on 23.01.2024, complainant/respondent no.3 moved an application before SHO, Police Station, Samba that his granddaughter, had gone missing and it has come to his notice that a boy namely Manish used to make phone calls to her and has taken her with him. On this information, FIR No.28/2024 for commission of offence U/S 363 IPC was registered and investigation was assigned to the IO, who went on spot, recorded the statements of witnesses, obtained CDRs/SDRs of some suspicious mobile numbers and conducted search of the girl; that during enquiry, one of the friends of accused namely Surjeet Singh disclosed that on 30.01.2024, accused Sumit Kumar @ Manish called him and told that he has run away with a girl and was in Amritsar; that on further enquiry, a suspicious number was obtained which was being used by one Joginder Singh R/O Amritsar; that house of said Joginder Singh was searched and on enquiry, he stated that he had given shelter to the accused alongwith the victim girl and his brother-in-law namely Swaran Singh had brought both of them to his house; that during enquiry Joginder Singh further disclosed that aunt of accused Sumit Kumar @ Manish namely Suman Devi and his mother namely Nisha Devi were in direct contact with Sumit; that on 28.04.2024, IO arrested Suman Devi and Nisha Devi who during enquiry disclosed that minor girl and accused Sumit are at Baddi Solan; that on 04.05.2024, the minor girl was recovered and arrested accused Sumit Kumar @ Manish.



03. Accused Suman Devi, Nisha Devi and Joginder Singh were bailed out U/Ss 363/366/120-B/212 IPC, during further investigation, statement of other witnesses u/s 161 and 164 CrPC were recorded and offence under Sections 3/4/17 POCSO Act were added, on 11.07.2024, accused Swaran Singh was arrested, IO re-arrested accused Nisha Devi, Suman Devi and Joginder Singh u/s 17 POCSO Act, and concluded the investigation and offences U/Ss 363/366/120-B/212 IPC and 3/4 POCSO Act were proved against the accused Sumit Kumar @ Manish and offences u/s 363/366/120-B/212 IPC 17 POCSO Act were proved against the co-accused including the applicants; that the accused moved trial court seeking release on bail, who vide its order dated 04.03.2025 enlarged the accused-Suman Devi and Nisha Devi on bail, however, the bail application moved by the applicants herein, Joginder Singh and Swaran Singh was rejected. Aggrieved of rejection of their bail plea by the trial court, the applicants have approached this court by way of filing the instant bail application.

04. Pursuant to notice, objections, on behalf of the official respondents, stand filed, perusal whereof would show that offences under Sections U/Ss 363/366/120-B, 212 IPC 17 POCSO Act stand established against the applicants; that the grant of bail in favour of the applicants has been vehemently resisted on the ground that applicants are involved in heinous and non-bailable offences, as such, they cannot seek bail, as a matter of right; that the offences are heinous and carry punishment, which may extend to 10 years; that there is every apprehension that the applicants may jump over the bail. Lastly, it is prayed that relief, as prayed for by the applicants in this application, be rejected.



05. The complainant and the victim, on service of notice, though appeared through complainant, but did not file reply but vehemently opposed the grant of bail in favour of the applicants, during hearing of the bail application.

06. Learned counsel for the applicants argued that the applicants have been falsely implicated in the FIR, as the victim, who was having love affair with accused-Sumit and eloped out of her volition, which was admitted by the victim herself in her statement recorded during investigation but during the trial took somersault in her statement, and falsely implicated the applicants; that the order of rejection is otherwise bad in the eyes of law and the applicants are required to be admitted on bail for the ground that the only allegation in the FIR against the applicants is that they have provided shelter to the accused and the victim, and facilitated their marriage; that the applicants were under the impression that the accused and the victim were of marriageable age, and applicants were oblivious of the age of the victim at the relevant time; that the case projected against the applicants is an afterthought and to cover up the incident as is revealed from the statement of father of victim during investigation that there was a love affair between victim and main accused. Learned counsel further submitted that the main witnesses have already been examined before the Trial Court and both the applicants are behind the bar since 25.07.2024; that the victim has not alleged any serious allegations against the applicants in her statement recorded before the Trial Court. Lastly, it is prayed that the bail application of the applicants be allowed and they be released on bail.

07. Mr. Bharti, learned State counsel, ex adverso, vehemently argued that the applicants do not deserve the concession of bail and out of 28 Prosecution Witnesses, as many as 14 PWs have already been examined and the trial is



running at phenomenal pace; that the applicants are involved in heinous and non bailable offences; that the offences of which the applicants are charged are, punishable, which carries punishment of imprisonment for a term which may extend to **seven** years under Section 363 IPC, for offence U/S 366 IPC, punishment with imprisonment for a term which may extend to **ten** years, and for offence U/S 17 POCSO, for abetment in committing the offences U/Ss 3 & 4 of POCSO, carries punishment with imprisonment for a term of not less than 7 years but may extend to **imprisonment for life**, thus attracts the rigors of Section 437 CrPC hence the applicants cannot be admitted to bail. He further argued that, the applicants, at the most, may pray for direction to the trial court for timely conclusion of trial. Lastly, it is prayed that the bail application be out-rightly rejected.

08. Heard and considered.

09. The Apex Court in Criminal Appeal No.988/2025 titled '**Manoj Kumar V. State of Madhya Pradesh & Anr.**' decided on 28.02.2025 granted bail to the applicant therein in view of the fact that the charge sheet had been filed, the charges were framed and custodial interrogation was not required. Hon'ble The Kerala High Court in a Bail Appl. No.3492/2020 titled '**Harikrishnan V. State of Kerala & Ors.**' decided on 16.06.2020 granted bail to the applicant who was alleged and accused to have provided shelter and not directly involved in the offence of sexual abuse. The Gujarat High Court in Criminal Misc. Application No.15535 of 2020 titled '**Yogesh Shyambhai Sindhi V. State of Gujarat**' held that bail can be granted to the applicant, who is not a main accused noticing an element of love affair, not ruled out.

10. It is now well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is



any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. ([See: Ram Govind Upadhyay Vs. Sudarshan Singh & Ors. reported in \(2002\) 3 SCC 598](#)).

11. The offence of which the applicants are charged is, punishable under *Section 363 IPC*, which carries punishment of imprisonment for a term which may extend to **seven** years, *for offence U/S 366 IPC*, punishment with imprisonment for a term which may extend to **ten** years, and *for offence U/S 17 POCSO*, for abetment in committing the offences U/Ss 3 & 4 of POCSO, carries punishment with imprisonment for a term of not less than 7 years but may extend to **imprisonment for life**. The applicants/accused, however, have not been charged for the commission of offences punishable under Sections 3 and 4 of the POCSO Act. **Section 29 of POCSO Act, 2012** talks of 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 & Section 9 of the 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.

12. Element of love between the applicant/accused and victim as alleged in the complaint, age of victim as 17 years, elopement, applicants being relatives of the main accused not directly involved, and are stated to have abetted sexual



offences, committed by the main accused who is their relative, are factors which persuade this court to allow the application and to admit applicants/accused to bail.

13. In the facts and circumstances of the case and considering the nature of the charges framed against the applicants in the case and their continued incarceration since their arrest, without reference to the prosecution evidence, lest it may prejudice trial of the case, this Court is of the opinion that case is made out to exercise the discretion and enlarge the applicants on regular bail.

14. Viewed thus, the application is **allowed** and the applicants/accused are admitted to bail subject to the following conditions that they shall:

- (i) furnish bail and personal bonds to the tune of Rs.50,000/- each to the satisfaction of the trial court;
- (ii) furnish their permanent residential address to the trial court;
- (iii) not associate themselves with the prosecution witnesses or tamper with the prosecution evidence, in any manner, whatsoever; and
- (iv) attend the hearings of their case on each and every date of hearing without fail.

In case of contravention of any of the aforesaid conditions, the prosecution or the complainant can approach the trial court, seeking cancellation of the bail.

15. The Bail Application is thus disposed of as '**allowed**', alongwith pending application(s).

(M.A Chowdhary)
Judge

Jammu
19.02.2026
Raj Kumar

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