

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

Reserved on: 10.12.2025

Pronounced on: 19.12.2025

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*Whether the operative part
or full judgment is
pronounced: **Full***

Bail App No.91/2025

BASHARAT AHMAD BHAT

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. Mir Umar, Advocate.

Vs.

UT OF J&K

...RESPONDENT(S)

Through: - Mr. Faheem Nisar Shah, GA.

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

JUDGMENT

1) The petitioner has invoked jurisdiction of this Court under Section 483 of BNSS for grant of bail in a case arising out of FIR No.80/2023 for offences under Sections 376 of IPC registered with Police Station, Soura, which is stated to be pending before the Court of 2nd Additional Sessions Judge, Srinagar.

2) As per case of the prosecution, on 26.12.2023, the complainant, PW Abdul Majid, lodged a written report with the police alleging therein that his granddaughter (the prosecutrix) has been raped and made pregnant by the

petitioner herein. On the basis of this report, FIR No.80/2023 for offence under 376 of IPC came to be registered with Police Station, Soura, and investigation of the case was set into motion. During investigation of the case, age determination test of the prosecutrix was conducted and her age was found to be 18 years whereas from the statements of the witnesses recorded during investigation of the case, her age was found to be more than 19 years. The statement of the prosecutrix under Section 164 of Cr. P. C was also recorded.

3) In her statement recorded under Section 164 of Cr.P.C, the prosecutrix deposed that on the day of occurrence, she had gone to Tailbal along with her mother who had suffered an injury to her finger. She further stated she along with her mother and grandfather boarded the vehicle of the petitioner and proceeded to Tailbal. On reaching there, her mother and grandfather deboarded the vehicle and she stayed back along with the petitioner in the vehicle. The petitioner brought down her trouser and thereafter committed forcible intercourse with her. She further stated that the petitioner thereafter took her to his house and at that time nobody was present in his house and there also, the petitioner committed intercourse with her. She tried to raise alarm but nobody came over there to save her. Thereafter the petitioner

accompanied her on foot to her home. The petitioner also offered some eatables to her and he accompanied her until she reached her home.

4) During the course of investigation, the prosecutrix was also subjected to medical examination and it was found that she had conceived.

5) After completion of investigation, offence under Section 376 of IPC was found established against the petitioner and the challan was laid before the trial court. Vide order dated 02.04.2024, charge for offence under Section 376 of IPC stands framed against the petitioner and the trial of the case is going on. Perusal of the trial court record would reveal that besides the prosecutrix, as many as eight more witnesses have already been examined by the trial court. It also appears that the learned trial court, vide order dated 02.08.2024, has dismissed the bail application of the petitioner. Thereafter another bail application came to be filed by the petitioner before the learned trial court which was again dismissed by the said court in terms of order dated 10.04.2025, which prompted the petitioner to file the instant bail application.

6) It is pertinent to mention here that after the dismissal of second bail application of the petitioner, statements of

four more prosecution witnesses have been recorded. Therefore, there is a change in circumstances since the dismissal of second bail application of the petitioner.

7) The petitioner has sought bail on the grounds that from the statements recorded during trial of the case, the prosecution version against him is not proved. It has been further contended that only on the ground that the petitioner is involved in a heinous offence his bail application cannot be rejected, particularly when, prima facie, the offence for which he has been charged is not made out against him. It has been contended that the statement of the prosecutrix does not inspire confidence and this aspect of the matter has not been dealt with by the trial court while rejecting the bail applications of the petitioner. It has been further contended that the petitioner has been in custody for the last about two years and all the material prosecution witnesses have already been examined and, therefore, there is no apprehension of the petitioner tampering with the prosecution witnesses.

8) The respondent has resisted the bail application by filing a reply thereto. In its reply, besides narrating the allegations made in the chargesheet against the petitioner, it has been contended that if bail is granted to the petitioner, there is every apprehension that he would jump the

concession of bail. It has been further contended that the petitioner is involved in a heinous offence and that the prosecutrix has supported the case of the prosecution during trial of the case, therefore, the petitioner is not entitled to bail. It has been further contended that grant of bail to the petitioner would not be in the interests of society having regard to the nature of offence for which he has been charged.

9) I have heard learned counsel for the parties and perused record of the case including the trial court record.

10) While granting or refusing bail to an accused, the Court has to take into account the factors like prima facie case or reasonable grounds to believe that the accused has committed the offence, nature and gravity of the charge, severity of punishment in the event of conviction, danger of the accused absconding or fleeing if released on bail, character, behaviour, means, position and standing of the accused, likelihood of the offence being repeated, reasonable apprehension of the witnesses being tampered with and the danger of justice being thwarted by grant of bail.

11) Learned counsel for the petitioner, while arguing that the evidence led by the prosecution during trial of the case does not substantiate the charge against the petitioner, has

referred to the statement of the prosecutrix made during trial of the case. He has submitted that the prosecutrix is major aged about 19 years and as per her own statement, she had stayed back in the vehicle of the petitioner when her mother and grandfather deboarded the vehicle at Tailbal for consulting the doctor. It has been submitted that as per statement of the prosecutrix, the petitioner committed sexual intercourse upon her in the vehicle whereafter she was taken by the petitioner to his home where he again committed sexual intercourse upon her. On the basis of this statement of the prosecutrix, it is being contended by learned counsel for the petitioner that if at all any sexual intercourse has been committed by the petitioner upon the prosecutrix, the same was consensual in nature, particularly keeping in view the fact that the prosecutrix did not divulge this incident to any of her family members until she suffered abortion and was taken to the hospital by her grandfather.

12) The learned counsel has, while drawing attention of this Court to the statement of grandfather of the prosecutrix, submitted that the said witness has, during trial of the case, clearly stated that when he took the prosecutrix to hospital, the hospital authorities refused to treat her and he was asked by the doctors to register the case and only thereafter they would treat the prosecutrix. It has been contended that

this statement of the complainant, PW Abdul Majid Bhat, goes on to show that the prosecutrix or her family never intended to lodge a report against the petitioner but they were compelled to do so only when the hospital authorities refused to treat the prosecutrix, meaning thereby that whatever had happened between the petitioner and the prosecutrix, the same was consensual in nature.

13) After having gone through the statements of the prosecution witnesses, particularly statement of the prosecutrix, her mother and grandfather, there appears to be prima facie merit in the contentions raised by learned counsel for the petitioner. Although at the stage of considering the plea of bail, a meticulous analysis of the evidence led by the prosecution is to be avoided, yet, for the limited purpose of deciding this bail application, it does appear that the sexual intercourse alleged to have been committed by the petitioner upon the prosecutrix, who was major at the relevant time, appears to be consensual in nature. Therefore, a case for grant of bail in favour of the petitioner is made out. The learned trial court, while rejecting earlier bail applications of the petitioner, has not considered the evidence led by the prosecution even for the limited purpose of deciding the bail applications and has

mechanically rejected the applications on the ground that the petitioner is involved in a heinous offence.

14) Apart from the above, the petitioner has been in custody for the last about two years and all the material witnesses of the prosecution have already been examined by the trial court. In these circumstances, there is hardly any apprehension of petitioner tampering with the prosecution witnesses.

15) It is a settled law that High Court being a superior court has the jurisdiction to entertain and decide a successive bail application even in a case where there is no change of circumstances from the stage when the earlier bail application of an accused is rejected by the inferior criminal court. Thus, there is no bar to this Court to grant bail to the petitioner merely because on earlier two occasions his bail application has been dismissed by the learned trial court.

16) For the foregoing reasons, the application of the petitioner is allowed and he 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.

17) Observations made hereinabove shall remain confined to the decision of the instant application only and shall not be construed as an expression of opinion on the merits of the case.

SRINAGAR

19.12.2025

“Bhat Altaf-Szeg”

*Whether the **Judgement** is speaking: Yes*

Whether the order is reportable: Yes/No

