

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT JAMMU**
(THROUGH VIRTUAL MODE)

Reserved on: 03.12.2024
Pronounced on: 13.12.2024

Bail App No.22/2024

SUNIL KUMAR SHARMA

... PETITIONER(S)

*Through: - Mr. Amandeep Singh, Advocate, with
M/S: Mahesh Bakshi & Varun Gupta, Advocates.*

Vs.

UT OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Vishal Bharti, Dy. AG.

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

JUDGMENT

1) The petitioner has, through the medium of present petition, sought regular bail in a case arising out of FIR No.52 of 2023 for offences under Section 366, 376, 506 of IPC and Section 67 of IT Act registered with Police Station, Samba.

2) The facts leading to the registration of the aforesaid FIR are that on 20.08.2022, the victim girl did not return to her home from her college at Samba. On the same day, a missing report was lodged by father of the victim girl with P/S Samba. However, on the very next day, dead body of the victim girl was recovered from Railway Track, in Sirhind Samrala District Ludhiana Panjab.

3) It seems that GRP Samrala District Ludhiana initiated inquest proceedings under Section 174 of Cr. P. C to ascertain the

circumstances under which the deceased, who was travelling in a train from Kathua to Haridwar junction, had died. During the inquest proceedings, the statements of the witnesses were recorded and postmortem of dead body of the deceased girl was also conducted. In the meanwhile, father of the deceased girl submitted various applications before the police authorities as well as before the Court seeking enquiry into the circumstances leading to the death of the deceased girl. Ultimately, on 01.03.2023, the father of the deceased girl filed a petition under Section 156(3) of Cr. P. C before the learned Chief Judicial Magistrate, Samba, seeking registration of FIR.

4) In the aforesaid application, it was alleged by father of the deceased girl that due to sudden death of his daughter, he and his wife were under severe shock and that he has come to know from his wife that one local boy, the petitioner herein, used to follow his daughter while she was going to college. It was also alleged that the petitioner was warned by mother of the deceased girl not to do so but he continued to do so. It was further averred in the application that on one day, when the deceased girl returned from her college, her mother found her upset and when she enquired about the reason, the deceased girl disclosed to her mother that the petitioner herein has been compelling her to have physical relationship with him. She further informed her mother that the petitioner has clicked her intimate photographs and threatened her that in case she disclosed their physical relationship to anyone, he would make these photographs viral. As a result of this, the deceased,

as per the application filed before the learned Magistrate, was feeling depressed and she was unable to concentrate on her studies. It was alleged in the application that the petitioner is involved in the death of the deceased girl. Taking note of these allegations, the learned Chief Judicial Magistrate, Samba, directed the police to register an FIR, which resulted in registration of FIR No.52/2023.

5) During the course of investigation, the investigating agency recorded statements of the parents of the deceased girl under Section 164 of Cr. P. C and the statements of other witnesses were also recorded. The material pertaining to inquest proceedings was seized and the data relating to CDR of cell phone of the deceased girl was also retrieved. The investigating agency also seized the mobile of the petitioner and retrieved data from the same. It was found that the petitioner had deliberately deleted the data from his mobile phone. After retrieving the deleted data from the seized phone of the petitioner, it was found that there were some photographs of the deceased girl in his mobile phone.

6) After investigation of the case, the investigating agency came to the conclusion that the deceased had committed suicide after jumping from the running train because of the harassment and threats given to her by the petitioner herein. Thus, the offences under Section 376, 306, 506, 201 of IPC Section 67 of Information Technology Act were found established against the petitioner.

7) It appears that the petitioner had approached the Court of Principal Sessions Judge, Samba, for grant of bail but his application was rejected by the said court in terms of order dated 15.06.2023.

8) In the instant petition, it has been contended by the petitioner that there is no material in the charge sheet that would connect the petitioner to the alleged crime. It has been further contended that, prima facie, involvement of the petitioner in the alleged crime is not supported by the material collected by the investigating agency. It is being contended that the death of the deceased had taken place in August, 2022 but it was only in the month of November, 2022, that father of the deceased had approached the police for the first time. It has also been contended that the deceased, as per the prosecution case, had informed her mother about the alleged acts of the petitioner in January, 2022 but she did not disclose the same to anyone, which reflects the fallacy of the prosecution case.

9) The learned counsel appearing for the respondents, on the other hand, has contended that the allegations levelled against the petitioner are very serious in nature and he cannot be enlarged on bail at this stage, particularly when recently on 19.11.2024, the learned Principal Sessions Judge, Samba, has framed charges against the petitioner for offences under Section 376, 506, 201 of IPC and Section 67 of IT Act and not even a single prosecution witness has been examined as yet.

10) I have heard learned counsel for the parties and perused the material on record including the challan.

11) The guidelines relating to grant of bail have been laid down in Sections 437 and 439 of Cr. P. C. While in Section 437 Cr. P. C, certain restrictions and conditions have been laid down for grant of bail by a Court, the power to grant bail under Section 439 Cr. P. C for the High Court or the Sessions Court is wider. The overriding considerations in granting bail as laid down in Sections 437(1) and 439(1) of Cr. P. C, are the nature and gravity of the offence, the frivolity or otherwise of the prosecution case, the position and status of the accused with reference to the victim and witnesses, the likelihood of accused fleeing from justice, the chances of repeating of offence by the accused, the chances of tampering with the witnesses, the stage of investigation and the public interest.

12) Thus, besides the nature of offence and severity of punishment, a prima facie view of involvement of the accused in the alleged crime are prime factors which are required to be considered. Learned counsel for the petitioner has, during the course of arguments, laid much emphasis on this aspect of the matter by contending that the material on record does not even, prima facie, show involvement of the petitioner in the alleged crime.

13) In the above context, if we have a perusal of the charge sheet and the documents annexed thereto, it is revealed that although father of the deceased girl had initially not laid blame of death of his daughter upon anyone including the petitioner herein yet he had approached the Senior Superintendent of Police, Samba, in September, 2022, by way

of an application in which he had mentioned the cellphone number of the deceased girl and asked the police to investigate the matter by analyzing the CDR details of her cell phone. Another application was made by the father of the deceased before the Senior Superintendent of Police on 22.11.2022 making a similar request. However, in both these applications he did not nominate the culprit or the suspect. It is only on 01.03.2023 that the father of the deceased girl, for the first time, disclosed the name of the petitioner as the suspect while making an application under Section 156(3) of the Cr. P. C before the Chief Judicial Magistrate, Samba. The question that arises for consideration is as to whether this conduct of father of the deceased girl throws any doubt upon the prosecution version and if so, whether the same can form a ground for grant of bail to the petitioner?

14) A perusal of the statement of the mother of the deceased girl recorded before the Magistrate under Section 164 of the Cr. P. C during investigation of the case reveals that she has stated that it was in July, 2022, that her daughter, on coming back to home from her college, started crying, whereafter she disclosed to her mother that the petitioner had committed rape upon her as many as three times. She further disclosed to her mother that the petitioner had videographed her obscene pictures and he is threatening her to make them viral. She further stated that as a result of this, the mental condition of her daughter had become precarious whereafter, on 20th August, 2022, she

did not return from her college and subsequently her dead body was found in Punjab.

15) The father of the victim girl, in his statement recorded under Section 164 of the Cr. P. C, has stated that after about one month of the occurrence, he enquired from his wife as to what might have happened to their daughter and his wife disclosed that the petitioner is the reason for her death as he had committed rape upon her and he had also clicked her obscene pictures and videos, as a consequence whereof, the deceased girl had gone into depression.

16) The aforesaid statements of the parents of the deceased girl provide ample explanation for the omission on the part of the father of the deceased in mentioning the name of the petitioner in his initial applications which he made to the police because he was not aware about as to what had actually happened to his daughter. He had come to know about it only after his wife disclosed it to him after one month of the occurrence and immediately thereafter, he made an application before the police in September, 2022, asking the police to make investigation into the circumstances relating to death of the deceased and also provided to them the details of her mobile number so as to trace the contacts as well as the chats etc. from her mobile number. It seems that father of the deceased wanted to be sure before pointing any finger at the petitioner and for this reason, he did not mention name of the accused in the application which he made to the police in September, 2022. But one thing is clear that he suspected foul play in

the death of his daughter upon knowing the details from his wife and this prompted him to approach the police afresh.

17) There is also call data records collected by the investigating agency during investigation of the case, which clearly show that the deceased girl was in constant touch with the petitioner, may be not immediately prior to commission of suicide, but certainly upto January, 2022. In addition to this, the investigating agency has, during the investigation of the case, retrieved the photographs of the deceased girl from the mobile cell phone of the petitioner which he had deleted from his phone. All these circumstances, prima facie, go on to show the involvement of the petitioner in the alleged crime. Therefore, contention of learned counsel for the petitioner that the charge laid against the petitioner is frivolous, is without any merit.

18) The Supreme Court has, in a recent judgment in the case of **X vs. State of Rajasthan & anr.** (Special Leave Petition (Criminal) No.13378 of 2024 decided on 27th November, 2024), while holding that bail should not ordinarily be granted in heinous offences like rape or murder once trial starts, observed that it is not a correct practice that the Courts should grant bail to an accused just after framing of charge or just before the victim is to be examined by the prosecution before the trial court. the Supreme Court went on to observe that once trial commences, it should be allowed to reach to its final conclusion, which may either result in conviction of the accused or acquittal of the accused. It has been further held that it is only in the event if the trial

gets unduly delayed and that too for no fault on the part of the accused, the court may be justified in ordering release of the accused on bail on the ground that right of the accused to have a speedy trial has been infringed.

19) In the instant case, as already stated, there is enough material on record of the charge sheet to show the involvement of the petitioner in the alleged crime which is very heinous in nature, inasmuch as a young girl has not only lost her chastity but she has been compelled to commit suicide on account of threats extended by the petitioner that he would make her obscene pictures public. The charges against the petitioner have been framed by the trial court recently on 19.11.2024 and not even a single prosecution witness has been examined as yet. In these circumstances, enlarging the petitioner on bail at this stage would not only be against the interests of the society but it would also expose the material witnesses of the prosecution to danger of being threatened by the petitioner as their statements are yet to be recorded by the trial court. Therefore, the petitioner is not entitled to bail at this stage.

20) For the foregoing reasons, I do not find any merit in this petition. The same is dismissed accordingly.

(Sanjay Dhar)
Judge

Srinagar
13.12.2024
"Bhat Altaf, Secy"

Whether the order is speaking:
Whether the order is reportable:

Yes/No
Yes/No