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Supp

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App No. 147/2024

CrIM No. 1675/2024

Peerzada Mohd Yehya

..... Petitioner (s)

Through: Mr. Shah Ashiq, Adv. with
Mr. Wajid Haseeb, Adv.

V/s

Union Territory through Police Station Kokarnag and anr.

..... Respondent(s)

Through: Mr. Syed Musaib, Dy. AG

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge.

ORDER (ORAL)

04.12.2024

1. The petitioner has sought bail in anticipation of his arrest in FIR No. 150/2024 for offences under Sections 376, 420 IPC registered with Police Station Kokarnag.
2. Issue notice to the respondents.
3. Mr. Syed Musaib, learned Dy. AG enters appearance and accepts notice on behalf of respondent No. 1. Notice be sent to respondent No. 2 through police Station concerned.
4. At the very outset, learned counsel for respondent No. 1 has raised a preliminary objection with regard to the maintainability

of the present bail application on the ground that the petitioner without exhausting the remedy of approaching the court of first instance has, directly approached this Court for seeking bail in anticipation of his arrest. In this regard learned counsel for respondent No. 1 has relied upon the judgment of this Court in *Mohd. Shafi Masi Vs. Union Territory of J&K and another* passed in Bail App No. 13/2024 decided on 14.02.2024. The learned counsel has also contended that without hearing the victim/respondent No. 2, no interim indulgence can be granted in favour of the petitioner. In this regard the learned counsel has relied upon the judgment of the Supreme court in case titled *Jagjeet Singh and Ors. Vs. Ashish Mishra @ Monu and another* reported in 2022 Live Law (SC) 376.

5. Heard and considered.
6. As per the provisions contained in Section 482 of BNSS, the High Court and the court of Sessions have been vested with concurrent jurisdiction in the matters relating to grant of bail to a person apprehending arrest. There is thus no statutory bar to High Court to entertain an application for grant of anticipatory bail or regular bail directly but then there have been a series of judgments delivered by this Court which lay down rule of

practice that normally the accused should approach the court of first instance instead of directly approaching the High Court. It has been also held in these judgments including the judgment in the Mohd Shafi Masi (supra) which is being relied upon by learned counsel for respondent No. 1, that in appropriate cases where the circumstances warrant so, the High Court would be well within its jurisdiction to entertain the bail application of an accused directly.

7. Coming to the facts of the present case, the petitioner has pleaded in the petition that he has already approached this Court for challenging the FIR which is subject matter of the present bail application by way of CRM (M) No. 683/2024 in which notice has already been issued to the respondents. Having regard to the fact that subject matter of the present bail application is already under consideration of this Court in another petition, therefore, in such circumstances this Court is of the opinion that the application of the accused for grant of anticipatory bail can be entertained without asking him to approach the court of first instance.
8. So far as the second contention of learned counsel for respondent No. 1 is concerned, in Jagjeet Singh's case (supra),

the Supreme Court has laid down a broad principal of law that victim has a right to participate in criminal proceedings at all stages. In the instant case also, the victim has been made a respondent by the petitioner but that does not mean that in an appropriate case where the issuance of notice to the victim will defeat the relief sought in the application, it is necessary to hear her before granting such relief. In the instant case, the petitioner is seeking bail in anticipation of his arrest and in case his prayer for grant of ad interim relief is not considered before seeking notice upon respondent No. 2, there is every likelihood that he may be arrested and the relief sought would be rendered infructuous.

9. Now coming to the merits of this bail application. As per the FIR which is subject matter of this bail application, respondent No. 2/the victim has alleged that the petitioner had entered into marriage agreement with her about four years back. It is being alleged that the execution of the Nikah Namah was delayed by the petitioner on one pretext or the other. She further alleges that the petitioner has treated and behaved with her as wife and they had good relationship with each other during all these years. It is also alleged in the FIR that the victim had obtained loan of Rs.

9.00 lacs from the Bank at the instance of the petitioner and when there was default in payment of installment of loan, the same is being recovered from the pension account of her father as he stood guarantor for the repayment of the said loan.

10. Learned counsel for the petitioner has contended that these allegations clearly show that there was long standing relationship between the petitioner and respondent No. 2 and having regard to the assertion of the prosecutrix that she was living with the petitioner who treated her as his wife for considerable length of time, even if any sexual intercourse has taken place with her, the same in the circumstances of the case, was with free consent of the prosecutrix who is a major lady.
11. There appears to be *prima facie* merit in the submission of learned counsel for the petitioner and as such, a case for grant of interim indulgence is made out.
12. Accordingly it is provided that in the event of arrest of the petitioner in the aforesaid FIR, he shall be released on interim bail till next date of hearing, subject to the following conditions:
- i. That he shall furnish personal bond with a surety bond in the amount of Rs. 50,000/- each to the satisfaction of the Investigating Officer.

- ii. That he shall co-operate with the investigating agency.
- iii. That he shall not try to tamper with the prosecution evidence in any manner whatsoever.
- iv. That he shall not leave the Union Territory without prior permission of the Investigating Officer.
13. List along with CRM (M) No. 683/2024 on 24.12.2024.
14. In the meantime, the respondents shall file their objections to the bail application.

(Sanjay Dhar)
Judge

SRINAGAR

04.12.2024

Aasif

Whether the order is reported Yes/No

Whether the order is speaking Yes/No