

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Bail App No.423/2022

c/w

CRM(M) No.984/2022

Gorav Sayal , Age 25 years
S/o Sh. Devi Dutt
R/o Lower Nonial,
Tehsil Nowshera District Rajouri
Through his guardian father

....Applicant/Petitioner(s)

Through :- Mr. Siddhant Gupta, Advocate

V/s

1. The UT of Jammu & Kashmir
Through Senior Superintendent of
Police
(Rajouri), District Police
Headquarters, Rajouri.

2. Station House Officer
Police Station Nowshera,
Nowshera, Rajouri

....Respondent(s)

Through :- Mr. Bhanu Jasrotia, GA for-1 & 2
Mr. Aman Bhagotra, Advocate for complainant

Coram: HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE

ORDER
01.07.2024

1. Before dealing with this application on merits, this court considers it appropriate to pass a general order/direction to the Advocate General office that whenever a bail application is filed before this court and the copy of the same is received by the Advocate General office, the appropriate case diary, relevant in the case, shall be called for forthwith from the Police Station

concerned. Bail applications ideally should be decided on the first date of hearing by this Court. The same is possible only if the case diary is made available for the scrutiny by the Court on the very first date of hearing. In a bail application, there is no necessity to give an opportunity to the State to file written objections, as such, is not the mandate under the law. The same may be required only in those cases where a special statute requires it specifically. Bail applications must be decided on the basis of the material in the case diary. If this be the procedure that is followed, there should be no delay in deciding bail applications by the High Court.

2. This is an application for bail, which has been pending before this Court since 12.12.2022. The allegation against the applicant is under section 376 of the IPC. The incident is of 20th March, 2022, where the allegation is that the applicant allegedly entered the house of the prosecutrix and forcibly committed rape with her and ran away from the place when the prosecutrix raised an alarm. The FIR is registered for the offence after a delay of six months on 13.9.2022. The applicant has been taken into custody on 29.10.2022. When this Court enquired about the delay in the registration of the FIR, learned counsel for the applicant has submitted that, in the FIR it is alleged that there were parleys for a compromise between the prosecutrix and the applicant in which even the Sarpanch of the village was also involved. He, however, further submits that the meeting with the sarpanch took place after the incident in the month of May, 2022. The statement of the sarpanch recorded under Section 161 Cr.P.C. reflects that the father of the applicant had approached him and had prayed for some time in order to solemnize marriage

between the applicant and the prosecutrix. The prosecutrix is also stated to have been willing to enter into matrimony with the applicant.

3. The MLC of the prosecutrix has been placed before this Court, which does not reflect any external injuries anywhere on the body of the prosecutrix and specifically mentions that there are no injuries on the private parts of the prosecutrix. However the doctor opined that the sexual assault cannot be ruled out. The basis for such an opinion, however, has not been reflected in the MLC.

4. Learned counsel for the Union Territory, on the other hand, has submitted that the prosecutrix is consistently being harassed and is being forced to withdraw her statement. The prosecutrix has also engaged a learned counsel to oppose the bail application before this Court, who has appeared and informed the Court that he has no instructions from his client. As regards the number of opportunities that have been given to the prosecutrix, this Court is of the opinion that seven occasions this case has been listed before this court which was ample opportunity for the prosecutrix to appear and contest the case herself if she felt it so necessary.

5. After having heard the contesting parties, and having examined the period of incarceration undergone by the applicant which is more than one and half years and the fact that the FIR was delayed by six months and the charge-sheet has been filed and the MLC is inconclusive, this Court is of the opinion that the applicant can be enlarged on bail. This application is allowed subject to the applicant's furnishing a personal bond of ₹50,000/- and one surety of the like amount to the satisfaction of the Registrar Judicial of this Court. The

applicant shall not make any attempt to overawe or influence the prosecutrix or any of the witnesses of this case in any manner. In the event, the applicant acts to the contrary, the Union Territory or the prosecutrix shall have the liberty of filing an appropriate application for cancellation of this order granting bail. In addition thereto, the applicant shall register his presence before the S.H.O., Police Station, Nowshera, District Rajouri, once every 10 days commencing from his first appearance before the SHO on 9th July, 2024.

6. A typed copy of this order be given under the seal and signatures of the Bench Secretary to the Advocate General's office for compliance with that part of the order mention the paragraph No.1.

CRM(M) No.984/2022

Learned counsel for the applicant wants to withdraw this petition, which is a quashment petition, with liberty to file fresh, if need so arises.

Under the circumstances, this petition is dismissed as withdrawn with liberty aforementioned.

(Atul Sreedharan)
Judge

Jammu:
01.07.2024
Vinod, PS