

a i) The petitioner shall either sell or deposit all the fire arms alongwith ammution and arms licences, if taken, before the concerned authorities within 30 days from today.

b 7. It is clarified that the present bail order is only with respect to the above mentioned FIR. It shall not be construed to be a blanket order of bail in all other cases, if any, registered against the Petitioner.

8. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above.

c Petition stands allowed in the aforesaid terms.

Copy dasti.

Result:- Bail granted.

d ABC 2020 (I) 157 J&K
ACQUITTAL & BAIL CASES
HIGH COURT OF JAMMU & KASHMIR
(Tashi Rabstan, J.)
Crl R No.67/2019
e Decided on 19 December, 2019

OM PARKASH

- Appellant(s).

Versus

f STATE THRO. INCHARGE POLICE STATION, DOMANA, JAMMU - Respondent(s).

g **Law Covered:-** (A) Ranbir Penal Code, 1860 – Sections 376 & 452 – Rape case – Bail – Investigation completed – challan presented – charges framed – no allegation against the petitioner-accused with regard to influencing prosecution or attempting to tamper with prosecution evidence – Interim bail granted. (Para 17)

h (B) Criminal Jurisprudence – Bail Application – Consideration of – Requirements to be considered – Prima-facie involvement of a particular accused connecting him with the commission of alleged offence & its gravity or seriousness – Chances of tampering with evidence can also be a very valid ground for rejecting or accepting the Bail Application – Duty of the Court – there should not be any hindrance in free, fair & just trial. (Para 13)

(C) Criminal Jurisprudence – Bail Application – Consideration of – Principles for – (i) seriousness of the allegations – severity of

punishment – the character of evidence on which the charge is proposed to be sustained – possibility of tampering & intimidating the witnesses – chances of running away from the trial – (ii) false implication of the accused – allegations levelled not believable – wrecking vengeance for political or business reasons. (Para 14) a

(D) Criminal Jurisprudence – Bail – Granting of – Duty of the Court – Held, at the stage of considering the application for grant of bail – the Court has only to go into the limited question as to whether a prima facie case is established against the accused – It cannot go into the evidentiary value, credibility & reliability of the witnesses – However, while examining the bail plea of an accused, the circumstances under which crime is alleged to have been committed, the character and behaviour of accused person is also to be examined. (Para 15) b
c

(E) Bail – Grant vis-à-vis Refusal – While general allegations that the accused will tamper with the evidence without there being any supportive material, may not be a ground to refuse bail – if the accused is of such a character that his mere presence at large would intimidate the witnesses – or if there is material to show that he will abuse his liberty to subvert justice – or would tamper with the evidence – then bail may be refused. (Para 15) d
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(F) Rape & Abduction of women – Bail – Grant vis-à-vis Refusal – Abduction & rape are more serious offences against the women – the person, who is prima-facie found to have committed such offences, is not entitled to the concession of bail – the Court cannot lose sight of the fact that there could be instances where these stringent provisions are also misused – Instances may be few, but, are not improbable. (Para 16) f

(G) Constitution of India – Article 21 – Bail – The power to grant – has to be considered in the backdrop of the constitutional guarantee contained in Article 21 – which guarantees right to liberty of an individual. (Para 16) g

Law of relief:- *The Court cannot lose sight of the fact that there could be instances where the stringent provisions for offence against women are also misused.* h

Held:- While considering a Bail Application, what is required to be seen is, prima-facie involvement of a particular accused connecting him with the commission of alleged offence and its gravity or seriousness. Chances of tampering with evidence can also be a very

a valid ground for rejecting or accepting the Bail Application and at the same time, the Court has also to ensure that there should not be any hindrance in free, fair and just trial. (Para-13)

The principles which generally govern the grant of bail are relatable to following things:

b i/ seriousness of the allegations, severity of punishment, the character of evidence on which the charge is proposed to be sustained, possibility of tampering and intimidating the witnesses and chances of running away from the trial.

c ii/ false implication of the accused, allegations levelled not believable and wrecking vengeance for political or business reasons. (Para-14)

d The above principles are required to be kept in mind while exercising powers for grant of bail. It is also to be noted that at the stage of considering the application for grant of bail, the Court has only to go into the limited question as to whether a prima facie case is established against the accused. It cannot go into the evidentiary value, credibility and reliability of the witnesses. However, while examining the bail plea of an accused, the circumstances under which crime is alleged to have been committed, the character and behaviour of accused person is also to be examined. While general allegations that the accused will tamper with the evidence without there being any supportive material, may not be a ground to refuse bail, however, e if the accused is of such a character that his mere presence at large would intimidate the witnesses or if there is material to show that he will abuse his liberty to subvert justice or would tamper with the evidence, then bail may be refused. (Para-15)

g It is true that offences of abduction and rape are more serious offences against the women and the person, who is prima-facie found to have committed such offences, is not entitled to the concession of bail. The offences more particularly against the women have been viewed to be an offence against the Society at large and letting the accused on bail in such heinous offences if prima-facie committed h would definitely have deleterious effect on the mind of general public and would encourage re-occurrence of such crime, but, at the same time this Court cannot lose sight of the fact that there could be instances where these stringent provisions are also misused. Instances may be few, but, are not improbable. It is pertinent to mention here

that after registration of the case and till the final conclusions are drawn by the Trial Court, the accused is presumed to be innocent. It is only when the guilt is proved against him beyond all shadow of doubt, he is convicted of the offence with which he is charged. The power to grant bail has to be considered in the backdrop of the constitutional guarantee contained in Article 21 of the Constitution of India, which guarantees right to liberty of an individual. (Para-16)

In the aforesaid backdrop, it would not be just and equitable to keep the petitioner-accused in continuous custody, particularly when investigation has been completed, challan has been presented, and even charges are said to have been framed and also when there is no allegation against the petitioner-accused with regard to influencing prosecution or attempting to tamper with prosecution evidence. (Para-17)

Counsel:- For Appellant(s): Mr Parveen Kapahi, Adv.

For Respondent(s): Mr Amit Gupta, Adv.

Cases Referred:-

1. State of U.P. through CBI v. Amarmani Tripathi, (2005) 8 SCC 21, (Para-15)
2. Prahlad Singh Bhati v. NCT, Delhi, (Para-15)
3. Gurcharan Singh v. State Delhi Admn, (Para-15)
4. Kalyan Chandra Sarkar v. Rajesh Ranjan , (Para-15)
5. Ram Govind Upadhyay v. Sudarshan Singh, (Para-15)
6. Puran v. Rambilas, (Para-15)

JUDGMENT

TASHI RABSTAN, J.: - 1. Through the medium of instant petition, the petitioner-accused is seeking setting aside of order dated 16.09.2019 passed by the learned 3rd Additional Sessions Judge, Jammu and enlarging him on bail in case FIR No.229/2019 registered against him in Police Station, Domana Jammu for the commission of offences punishable under Sections 452/376 RPC.

2. It is contended by learned counsel for the petitioner, Mr. Kapahi that petitioner-accused had earlier moved the bail application before the trial Court on the ground that the petitioner-accused was not involved in any of the offences and to tarnish the image of the petitioner-accused and also causing harm to his reputation and profession, the aforesaid FIR had been registered against him. It is further contended that the petitioner-accused earlier also moved an

a application for grant of bail during the course of investigation, which was rejected. After presentation of the challan, another application was moved, stating therein that the petitioner was in the phase of old age and could not see through one eye and other eye was hyper myopic and, therefore, was not able to site things properly. The bail application was rejected by the learned Trial Court primarily on the plea of the prosecution that the offences of heinous and grave nature, like molestation and rape, should be curbed with iron hand and there was no change of any circumstance seeking invocation of jurisdiction of the Court for grant of bail by the petitioner-accused. Learned counsel further contends that after the production of the challan, the medical legal report was produced by the prosecution and after examination of said report, it was testified and opined that **"the Siemen analysis could not be performed because he was unable to attain erection and could not provide Siemens specimen for the analysis"**. Learned counsel further contended that the examination of the prosecution was also done by the medical authorities on the request of respondent and vide MLC No. 4347, it was opined that **"on the basis of clinical examination and investigation report, there is no recent evidence of sexual intercourse"**.

e 3. The learned counsel for the respondent resisted the petition contending therein that in case petitioner-accused is admitted to bail, he may jump over the bail and hamper and tamper with the prosecution witnesses which are yet to be examined in the Trial Court and also on the ground that release of the petitioner-accused at a stage when witnesses are yet to be examined and his remaining outside will cause deleterious effect on the mind of the general public and thwart the course of justice.

f 4. For facility of reference, ultimate paragraph of order dated g 16.09.2019 passed by the learned Trial Court containing conclusion of the Court below is reproduced as under:

h "It is not advisable, at this stage, to return a finding even of prima facie nature relating to existence/non-existence of contradiction of ocular version of the prosecution viz- a-viz medical evidence as projected by the defence counsel in his arguments. Certainly, this exercise will prejudice both to prosecution and defence as the charge is yet to be framed in the present matter. However, on perusal and consideration of the document as submitted in terms of 173

of Code of Criminal Procedure in the shape of police charge sheet, inference can safely be drawn that accusation levelled against the applicant-Om Parkash for commission of offence under Section 452/376 RPC as proved by the Investigating Officer, with the conclusion of his investigation appears to be prima facie, true. Hence, having drawn such an inference by me, applicant is not held entitled to be released on bail as there is a specific bar contained in the Proviso to section 497-C of Code of Criminal Procedure, in this regard. Furthermore, even otherwise, I am in agreement with the Ld APP that there is an increase in graph of crimes against women particularly sexual molestation/ harassment, forcible sexual exploitation, rape etc. In the present matter, gravity, heinous and seriousness of the crime committed of forcible sexual intercourse can safely be kept in the category of the afore-referred offences as the same has been committed against hapless young girl suffering with mental weakness. It is generally seen that such women folk, who cannot defend themselves on account of their physical weakness becomes readily and easily victim of sexual crimes at the hands of habitual and hardened criminals who are hell bent to disturb peace of law loving and abiding citizens of the organized society. Criminals of serious and heinous crimes like the one as involved of forcible sexual intercourse with a helpless mental weak young girl are to be dealt with iron hands. Their liberty as generally claimed by them by taking the assistance of fundamental rights enshrined in constitution of India can safely be curtailed in the interest of society at large. I am hasten to add this can safely be done in order to keep peace, tranquillity and law and order in the society."

5. During the course of argument of this petition, learned counsel for the petitioner-accused and State have brought to the notice of this Court that during the pendency of this petitioner, the charges against the petitioner-accused for the commission of offences punishable under Section 376 RPC have been framed and challan has been set out for prosecution evidence.

6. Learned Trial Court, after considering the rival contentions, however, rejected the bail plea of the petitioner-accused for the reasons given in the order and referred to hereinabove. As stated

a above in the meanwhile, challan too has been produced and prosecution has been asked to lead evidence. The petitioner- accused seeks his release on bail, *inter alia*, on the grounds: that the petitioner is a senior citizen, who is 78 years old and is law abiding citizen and is not involved in any of the offences till date; that the offence attributed to the petitioner-accused is not punishable with death or life imprisonment and, as such, the bar under Section 497 Cr.PC is not attracted; that there was no material on record to suggest that the petitioner-accused, if released on bail, would jump over the bail and win over the prosecution witnesses; that the investigation was completed by the Investigating Officer without any interference from any quarter and the challan has now been presented before the Court; that even the arguments about framing of charge or otherwise discharge, have already been addressed by the learned counsel for the petitioner-accused and the learned Additional Public Prosecutor; that d there was no reason to decline bail to the petitioner-accused on the mere apprehension that the petitioner-accused if released on bail would jump over the bail and hamper and tamper with the prosecution witnesses without there being any material to substantiate the conclusions drawn by the learned court below; that e the petitioner-accused is a law- abiding citizen and would abide by all the terms and conditions that may be imposed by the Court while granting bail and this was made amply emphatic before the learned trial Court; that the petitioner-accused is in jail for last eight months and keeping in view the nature of accusations levelled against him f and the evidence collected during investigation, he is entitled to be released on bail.

7. That the findings of the learned trial Court that the offences alleged against the petitioner are heinous in nature, as such, he does not deserve bail, also cannot sustain. Even in cases involving offence g against the women, there are safeguards provided to the accused, who may be victim of some conspiracy or blackmailing tactics applied by the so-called victims of such crime. Present is an instance of a complete abuse of police machinery, inasmuch as serious allegations h of rape in terms of Section 376 RPC were levelled, which, however, could not be substantiated by any evidence collected during the course of investigation. In the newly added Section 497-C which makes special provision regarding bail in certain offences against women including the offence punishable under Section 376 RPC, it has been specifically provided that the bail to the accused person

would only be denied if a perusal of the case diary or the report made under Section 173 Cr. P.C., the Court is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima-facie true. No such conclusion has been arrived at by the learned trial Court with regard to the prima-facie truthfulness or otherwise of the accusations against the petitioner-accused. On the other hand the petitioner-accused by reference to the evidence collected during the course of investigation made it is abundantly clear that the case registered against him and the investigation by the Investigating Officer was totally false and frivolous. The story projected by the prosecution did not inspire any confidence and was full of major inherent contradictions going to the root of the veracity of the allegations. The allegations were prima-facie false and frivolous, thus, entitling the petitioner-accused to the concession of bail that too when he had already been in jail for the last about eight months of the investigation had been completed culminating into the presentation of challan before the learned Court below. All these aspects however, were not appreciated by the learned Court below, which mechanically dismissed the application of bail. The petitioner-accused in view of the submissions made above is, therefore, entitled to be released on bail so that he can defend himself in an effective manner. The petitioner-accused cannot be punished without a trial by keeping him in jail for indefinite period.

8. That it may be pertinent to mention here that earlier bail application was moved when the investigation was in progress and had not yet been completed. The same was, therefore, dismissed being premature as before the submission of challan, it was not possible for the learned Trial court to formulate an opinion with regard to the truthfulness or otherwise of the accusations levelled against the petitioner-accused. The bail application was, thus, rejected primarily on the ground that investigation was then in progress and the evidence was yet to be collected. However, there was substantial change thereafter when the investigation was completed and challan was presented before the learned Court below and it was revealed that the investigation had failed to prove any offence as having been committed by the petitioner-accused. This prompted the petitioner-accused to approach the learned court below again by filing a fresh application on the basis of changed circumstances. Matter though was heard in detail by the learned court below, but, the submissions made on behalf of the petitioner- accused were not appreciated by the

a learned court below in proper perspective and the learned court below was moved by the solitary ground that the rape being the heinous offence and crime against state, is to be viewed differently for the purpose of grant of bail and there is specific bar contained in the Proviso to Section 497-C of Code of Criminal Procedure. On these grounds the bail application was rejected.

b 9. Reiterating the aforesaid grounds, learned counsel for the petitioner-accused has submitted that although it is true that in the offence punishable under Section 376 RPC, petitioner-accused is not entitled to bail as a matter of right, but, the same is regulated by the Code of Civil Procedure, yet in view of the facts and circumstances of the case and the evidence collected by the Investigating Officer during investigation makes it a case where this Court would be of the opinion that there are no grounds for believing that the accusations against the petitioner-accused are prima-facie true. Learned counsel for the petitioner-accused has pointed out to the glaring contradictions in the statements of the prosecutrix recorded under Section 164-A Cr.P.C. and learned counsel also referred to the medical evidence to substantiate his submission that offence of rape has not been committed at all. The medical evidence, as contended by learned counsel for the petitioner-accused, clearly points out that there was no medical evidence of rape having been committed on the prosecutrix.

f 10. Learned counsel for the petitioner-accused further argued that referring to the whole evidence concluded during investigation, it was argued by learned counsel for the petitioner-accused that statement of prosecutrix recorded under Section 164-A Cr.P.C. which is perhaps the only piece of some incriminating evidence against the petitioner-accused, cannot be believed to be true even prima-facie, thus, disentitling the petitioner-accused to the grant of concession of bail. It is also argued that the petitioner-accused is in custody for the last about eight months and investigation has been completed and that there is no evidence of any attempt on the part of the accused or his relatives to influence the prosecution evidence. That being the position keeping the petitioner-accused in custody, particularly, in the face of evidence collected during investigation would be punitive and would amount to punishing the petitioner-accused without trial.

h 11. *Per contra*, learned AAG when confronted with the submissions made by learned counsel for the petitioner-accused and nature of evidence collected during investigation has submitted that

the pleas raised by petitioner-accused, even if presumed to have some force, would be relevant during the course of trial. As contended by learned AAG in the face of statement of prosecutrix recorded under Section 164-A Cr. P.C., which is primary evidence, accused cannot claim that there is no evidence connecting him with the commission of offence under Section 376 RPC. He has further stated that offence of rape is very heinous offence and is a crime against the Society, as such, the Courts should be very reluctant to extend the concession of bail to the petitioner-accused, alleged to have committed such heinous offence against the women. He, however, was not in a position to meet other arguments raised on behalf of the learned counsel for petitioner-accused.

12. Heard learned counsel for the parties and perused the record.

13. While considering a Bail Application, what is required to be seen is, prima-facie involvement of a particular accused connecting him with the commission of alleged offence and its gravity or seriousness. Chances of tampering with evidence can also be a very valid ground for rejecting or accepting the Bail Application and at the same time, the Court has also to ensure that there should not be any hindrance in free, fair and just trial.

14. The principles which generally govern the grant of bail are relatable to following things:

i/ seriousness of the allegations, severity of punishment, the character of evidence on which the charge is proposed to be sustained, possibility of tampering and intimidating the witnesses and chances of running away from the trial.

ii/ false implication of the accused, allegations levelled not believable and wrecking vengeance for political or business reasons.

15. The above principles are required to be kept in mind while exercising powers for grant of bail. It is also to be noted that at the stage of considering the application for grant of bail, the Court has only to go into the limited question as to whether a prima facie case is established against the accused. It cannot go into the evidentiary value, credibility and reliability of the witnesses. However, while examining the bail plea of an accused, the circumstances under which crime is alleged to have been committed, the character and behaviour of accused person is also to be examined. While general allegations

a that the accused will tamper with the evidence without there being any supportive material, may not be a ground to refuse bail, however, if the accused is of such a character that his mere presence at large would intimidate the witnesses or if there is material to show that he will abuse his liberty to subvert justice or would tamper with the evidence, then bail may be refused. My view is fortified by a judgment of the Supreme Court rendered in the case titled of *State of U.P. through CBI v. Amarmani Tripathi*, reported in (2005) 8 SCC 21. What has been observed in this regard in paragraph 18 of the said judgment, may be noticed as under:

c "It is well settled that the matters to be considered in 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 charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, d behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail e (see *Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State Delhi Admn.*). While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if f there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. Rajesh Ranjan* (SCC pp.535-36, para 11). g

h "11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such

reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are: a

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence. b

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima-facie satisfaction of the court in support of the charge (See: *Ram Govind Upadhyay v. Sudarshan Singh* and *Puran v. Rambilas*)."c

16. It is true that offences of abduction and rape are more serious offences against the women and the person, who is prima-facie found to have committed such offences, is not entitled to the concession of bail. The offences more particularly against the women have been viewed to be an offence against the Society at large and letting the accused on bail in such heinous offences if prima-facie committed would definitely have deleterious effect on the mind of general public and would encourage re-occurrence of such crime, but, at the same time this Court cannot lose sight of the fact that there could be instances where these stringent provisions are also misused. Instances may be few, but, are not improbable. It is pertinent to mention here that after registration of the case and till the final conclusions are drawn by the Trial Court, the accused is presumed to be innocent. It is only when the guilt is proved against him beyond all shadow of doubt, he is convicted of the offence with which he is charged. The power to grant bail has to be considered in the backdrop of the constitutional guarantee contained in Article 21 of the Constitution of India, which guarantees right to liberty of an individual. d
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17. In the aforesaid backdrop, it would not be just and equitable to keep the petitioner-accused in continuous custody, particularly when investigation has been completed, challan has been presented, and even charges are said to have been framed and also when there is no allegation against the petitioner-accused with regard to influencing prosecution or attempting to tamper with prosecution evidence. h

18. Keeping in view the totality of the facts and the case law on the subject as analysed hereinabove, the age of the petitioner and

