

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 29.12.2021

Pronounced on : 29.01.2022

Bail Application No.311/2021
c/w

Bail Application No.312/2021

B.A. No.311/2021

Mohd. Javed

...Petitioner(s)/applicant(s)

Through : Mr. K. Nirmal Kotwal, Advocate

versus

Union Territory of J&K

...Respondent(s)

Through : Mr. Ravinder Gupta, AAG
Mr. Raja Mohit Bucha, Advocate

B.A. No.312/2021

Zahid Choudhary

...Petitioner(s)/applicant(s)

Through : Mr. K. Nirmal Kotwal, Advocate

versus

Union Territory of J&K

...Respondent(s)

Through : Mr. Ravinder Gupta, AAG
Mr. Raja Mohit Bucha, Advocate

CORAM : HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGMENT

1. In both the bail applications FIR as well as commission of offences is same, as such both are being taken up together.

3. As per the prosecution story, on 12.02.2020, the father of prosecutrix lodged a complaint before the Police Station Bari Brahmana, Jammu that his daughter, a student of Class 12th in S.P. Smart School Sarore, boarded school bus from Badhori. She alongwith other students was taken to Vijaypur by another bus by the school for practical examination, but she left the bus at Vijaypur. Thereafter, the prosecutrix boarded a matador for Bari Brahmana, for where she was kidnapped by the petitioners herein. In the morning at about 6:00 AM, the prosecutrix was thrown in the field near their house in unconscious condition. Petitioner/accused Mohd. Javed was arrested on 10.03.2020 and petitioner/accused Zahid Choudhary was arrested on 21.08.2020.

4. Learned counsel appearing for petitioner argued that the petitioners and the complainant party belong to the same community and that the registration of FIR is the result of enmity because the father of victim had strong suspicion that petitioner-Mohd. Javed was instigating his daughter not to marry where she had been engaged. He further argued that the medical evidence does not support the version of victim. Further, as per the statements of victim and her father-complainant, deposed before the trial Court, no prima facie case is coming out against the petitioners herein. Learned counsel prayed that in case concession of bail is considered by this Court, the petitioners herein undertake to abide by all the terms and conditions which may be imposed by this Court.

not cooperating with the investigation and overlooked the instructions passed by the trial Court, as such the High Court cancelled the bail orders. It is further averred that the prosecution has already examined two witnesses, i.e., the prosecutrix/victim and her father in the case and that as per circumstances of the case, the offences are well proved against the petitioners-accused.

6. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the xerox record of trial court.

7. Admittedly, petitioner-Mohd. Javed was arrested on 10.03.2020 and he was accorded bail by the learned Sessions Judge on 30.03.2020 on the basis of medical report. However, the bail of Mohd. Javed came to be cancelled by this Court on 04.08.2020 and one of the grounds for cancellation of bail was that he was not cooperating with the investigation and overlooked the instructions passed by the trial Court. After the cancellation of bail on 04.08.2020, petitioner/accused Mohd. Javed is in judicial custody, whereas petitioner/accused Zahid Choudhary was arrested on 21.08.2020.

8. Although the POCSO Act was enacted with the object to protect children from offences from sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for speedy trial of such offences and for matters connected therewith or incidental thereto, yet in the present case the victim in her statement recorded before the trial Court stated her age to be 19 years. Further, charges have already been framed and

condition, yet in her examination she did not certainly stated regarding commission of rape by the accused persons, even she did not recognized accused-Zahid Choudhary. Even, medical report opined that there was no positive evidence of physical assault or recent sexual assault on the basis of physical examination, further no marks of injury or violence was seen on any part of genitalia. The driver of the school bus in his statement recorded under Section 164 Cr.P.C. stated that after conclusion of the examination when he departed towards SP Smart School, the prosecutrix refused to go back to school and wanted to be dropped at Vijaypur. Further, even after filing of charge-sheet and examination of prosecutrix and her father, early trial would be a bleak possibility looking to the challenging period of COVID-19 pandemic, thus keeping the accused to jail would not serve the cause of justice.

9. Therefore, keeping in view the fact that since there appears to be very little to support any allegation of serious violence or injury that would betray brutality in the offence alleged and that the petitioners-accused are not a repeat offenders nor do they have any prior or other criminal involvement as also there is no allegation of any threat having been extended by or on the petitioners' behalf between the registration of FIR and their arrest, as such I deem it proper to allow both the bail applications and admit the petitioners to regular bail. Ordered accordingly. Let the petitioners be released on bail subject to the following conditions:

- ii.** the petitioners shall appear before the trial court on each and every date of hearing
 - iii.** they shall not leave the territorial limits of Union Territory of J&K without prior permission of the trial court;
 - iv.** they shall not tamper with the prosecution witnesses.
- 10.** Nothing in this order shall be construed as an expression on the merits of the evidence in the pending trial.
- 11.** The bail application is disposed of in the above terms.

Jammu:
29.01.2022
(Anil Sanhotra)

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No