

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

Reserved on : 23.07.2021  
Pronounced on: 06.08.2021

CRM(M) No. 130/2021  
c/w  
Bail App No. 70/2021

Abdul Malik

.....Appellant/Petitioner(s)

Through :- Mr. Anil Sethi, Advocate

v/s

Union Territory of J&K and anr.

.....Respondent(s)

Through :- Bhanu Jasrotia, GA

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

**CRM(M) NO. 130/2021**

1. The present petition has been filed by the petitioner under section 482 Cr.P.C. for quashing the criminal proceedings, arising out of Challan, titled, Union Territory of J&K vs. Abdul Malik, arising out of FIR bearing No. 32/2020, registered with Women Police Station, Rajouri for commission of offence under section 376/IPC.

2. It is stated that the petitioner has retired from the Army. Respondent No. 2 and her husband became greedy and started demanding money from the petitioner on the various pretexts but the petitioner refused to part with any of the amount of money, resulting in to hostility between the petitioner on the one hand and respondent No. 2 and her husband on the other hand. It is further stated that pursuant to a conspiracy in order to pressurize the petitioner, respondent No. 2 and her husband approached the Police Station,

Rajouri and presented a concocted version of some incident having taken place two months prior to the said report. It is further stated that respondent No. 2 has never referred to any date of occurrence either in her report or in her statement recorded under Section 164 Cr.PC before the Magistrate. It is further stated that respondent No. 2 without approaching the SHO or the District Superintendent of Police concerned, as required under law, straightway filed an application before the learned Magistrate, who vide order dated 13.10.2020 without application of the mind endorsed the same to the concerned SHO.

3. The petitioner has challenged the criminal proceedings primarily on the ground that the respondent No. 2 has not complied with the mandate of law laid down in the case of *Priyanka Srivastava & Anr vs State Of U.P. & others AIR SC, 2015 1758* case and straightway approached the Magistrate under section 156(3) Cr.P.C. and further respondent No. 2 has neither given any date of occurrence in the FIR nor in her statement recorded under section 164 Cr.P.C. On these grounds only, the petitioner has filed the present petition for quashing the criminal proceedings, arising out of FIR No. 32/2020 registered with Women Police Station, Rajouri.

4. Response stands filed by the respondents, in which it is stated that on 14.10.2020, complainant lodged a written complaint at Women Police Station, Rajouri against the petitioner stating therein that her husband had gone to Saudi Arabia for labour purpose. In absence of her husband, the petitioner, who is her neighbour and a retired Army personnel, tried to develop illicit relation with her but she denied. The accused taking advantage of the absence of husband of respondent No. 2, threatened her with the dire consequences and committed rape forcibly with her many times. It is stated that two months back, when she was returning to her home after leaving her children to nearby

Madrassa, the petitioner, who had hidden himself in the maize crops, dragged her into the field and forcibly committed rape with her. During the course of investigation, the Investigating Officer got the statement of the complainant recorded under section 164 Cr.P.C., in which she has stated that two months ago, when she was returning home after delivering her children to nearby Madarsa, the petitioner, who was hiding in the maize crops restrained her way and torn her clothes. By all possible efforts, she rescued herself from his clutches, reached home and narrated the whole story to the family. After three days again, when she went for leaving her children to Madarsa and while returning back, the accused showed her knife and threatened her for dire consequences and raped her. After the conclusion of the investigation, allegations for commission of offences under section 341/376 IPC were fully established against the petitioner and the charge sheet also stands filed in the Court on 29.12.2020.

5. Mr. Anil Sethi, learned counsel for the petitioner vehemently argued that the respondent No. 2 has straightway approached the learned Magistrate by way of an application under section 156(3) Cr. P.C. without first approaching the SHO and District Superintendent of Police concerned. He further argued that there are major contradictions in the prosecution story.

6. On the other hand, Mr. Bhanu Jastoria, learned GA submitted that as the challan stands filed against the petitioner, the petitioner can raise all the issues before the trial court.

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

8. From the record, it is evident that the Investigating Officer has proved the offence under sections 341 and 376 IPC against the petitioner and challan for commission of aforesaid offences stands filed before the concerned

Court. The contention raised by the learned counsel for the petitioner that mandate of law laid down in **Priyanka Srivastava's judgment** (supra) has not been followed, cannot be considered now, as the concerned SHO after perusing the contents of the application filed under section 156(3) Cr.P.C., has registered the FIR and even after investigation, the Investigating Officer has come to the conclusion that the offence has been committed by the petitioner. The mandate of law laid down in Priyanka Srivastava's case will not come to the rescue of the petitioner at this stage. So far as, other ground that there are major contradictions in the prosecution case, therefore, the challan is required to be quashed, is also misconceived and cannot be considered in a petition under section 482 IPC as these issues pertain to the factual aspects of the case, those require adjudication by the trial while finally adjudicating the challan.

09 In view of the above, there is no merit in the instant case. The same is, as such, dismissed.

**Bail App No. 70/2021**

10. The petitioner was granted bail by this Court in anticipation of arrest on 31.03.2021.

11. As the challan stands filed against the petitioner before the trial court and the presence of the petitioner is required only during the trial, the interim bail granted to the petitioner vide order dated 31.03.2021 is made absolute on the same terms and conditions. In the event, the petitioner violates the conditions imposed by this Court vide order dated 31.03.2021 while granting bail, the trial court shall be at liberty proceed in accordance with law.

12. The bail application is disposed of.

**(Rajnish Oswal)**  
**Judge**

JAMMU:

06.08.2021

Karam Chand/Secy

Whether the order is speaking: Yes/No  
Whether the order is reportable: No/No

