

**HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT SRINAGAR
(Th. virtual mode)**

**Reserved on 18.05.2026
Pronounced on 05.06.2026
Uploaded on: 05.06.2026**

Whether the operative part or full
judgment is pronounced: **Full**

Bail App No. 76/2024

Union Territory of J&K th. Police
Station, Sumbal

.....Appellant(s)/Petitioner(s)

Through: Mr. Jahangir Dar, GA

vs

Parvaiz Ahmed Ganie

..... Respondent(s)

Through: Mr. Bhat Khursheed, Adv.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. Through the medium of present petition, the petitioner has challenged order dated 27.06.2024 passed by the learned Additional Sessions Judge, Bandipora(for short the trial court), whereby in a case arising out of FIR No. 155/2022 for offences under Sections 341, 376 and 506 IPC registered with Police Station, Sumbal, the respondent-accused has been enlarged on bail.
2. The petitioner has challenged the impugned order on the grounds that the same has been passed by the learned trial court without application of mind on the basis of conjectures and surmises. It has been contended that the respondent-accused stands charged with a heinous offence of rape and, as such his bail application ought not to have been accepted by the learned trial court. It has been submitted that only 02 out of 12 prosecution witnesses

have been examined by the learned trial court and without examining the other material witnesses of the case, the accused should not have been enlarged on bail. It has been submitted that while passing the impugned order, the learned trial court has doubted the veracity of the testimony of the prosecutrix on flimsy grounds like non seizure of lighter and muffler possessed by the accused. It has been submitted that the learned trial court has critically analysed the evidence on record at the stage of granting bail to the accused, which is impermissible under law. It has also been contended that having regard to the fact that the respondent is involved in a crime against woman, the learned trial court should have avoided to enlarge him on bail.

3. The respondent has resisted the petition by filing his reply. In the reply, it has been submitted that the concession of bail granted to the respondent cannot be cancelled mechanically and unless there are cogent and overwhelming circumstances to show that the respondent has misused the concession of bail, the same cannot be withdrawn. It has been contended that the present proceedings cannot be converted into an appeal and it is only if the conditions necessary for cancellation of bail are satisfied that this Court can interfere in the impugned order passed by the learned trial court. According to the respondent, the conditions are not satisfied in the present case.
4. I have heard learned counsel for both the sides and perused the record of the case, including the record of the trial court.
5. Before dealing with the rival contentions of the parties, it would be apt to notice the brief facts of the prosecution case, which are discernable from the

charge sheet. It appears that on 27.12.2022 a written report was produced by father of the prosecutrix with Police Station, Sumbal alleging therein that on the said day, at about 3 PM, the prosecutrix was carrying cow dung to her farm land. It was alleged that the respondent-accused followed the prosecutrix and when she reached her farm land, the accused/respondent caught hold of her trouser and tore apart her clothes thereby outraging her modesty. It was further alleged that the respondent-accused forcibly committed sexual intercourse upon the prosecutrix and she was saved by some ladies working in nearby fields from the clutches of the respondent-accused. On the basis of this report, the FIR came to be registered and investigation was set into motion.

6. During the course of investigation, the prosecutrix was subjected to medical examination and her trouser was seized, which was sent to FSL for chemical examination. However, no spermatozoa was detected from the clothes of the prosecutrix. The Investigating Agency also conducted the Age Determination Test of the prosecutrix and it was found that she was major. Her statement under section 164 Cr.P.C. was got recorded before the Magistrate. The accused was arrested on 29.12.2022. After investigation of the case, offences under Sections 376, 341 and 506 IPC were found established against the respondent. The challan was laid before the learned trial court on 13.02.2023. On 11.04.2023, charges for offences under Sections, 341, 376 and 506 IPC were framed against the respondent. During the course of trial, statements of the prosecutrix and her father were recorded. No other witness out of 12 witnesses cited in the challan has been recorded by the learned trial court so far.

7. Learned trial court has, vide impugned order dated 27.06.2024 enlarged the respondent-accused on bail by assigning a number of reasons. One of the reasons assigned by the learned trial court for enlarging the respondent on bail is that the author of the report lodged with the Police is not father of the prosecutrix but the same has been written by some police official. Another reason that has been assigned by the learned trial court for enlarging the respondent on bail is that no spermatozoa was detected from the trouser of the prosecutrix. Learned trial court has also observed that the lighter used by the accused in the commission of the offence to threaten the victim, as also the muffler that was used by the respondent-accused in gagging the mouth of the prosecutrix have not been seized. The learned trial court has further noted that there is discrepancy in the place of occurrence as depicted in the site plan and the actual place of occurrence identified by the prosecutrix in her statement recorded during trial of the case. It has also been noted that there has been unexplained delay of lodging the report with the Police. Yet another reason assigned by the learned trial court for enlarging the respondent-accused on bail is that he has been under incarceration for more than one and a half year and during this period, the trial of the case has progressed at snail's pace as only two prosecution witnesses have been examined.
8. Before dealing with the rival contentions raised by the learned counsel for the parties, it would be apt to understand the legal position as regards scope and power of superior court in cancelling the bail granted by an inferior criminal court.

9. The Apex Court has, in the case of **Imran vs Mohammad Bhava, (2022) 13 SCC 70** has, while discussing the principles relating to cancelation of bail held as follows:

“20. Indeed, it is a well-established principle that once bail has been granted it would require overwhelming circumstances for its cancellation. However, this Court in its judgment in *Vipan Kumar Dhir Vs. State of Punjab and Anr.* has also reiterated, that while conventionally, **certain supervening circumstances impeding fair trial must develop after granting bail to an accused**, for its cancellation by a superior court, bail can also be revoked by a superior court, when the previous court granting bail has ignored relevant material available on record, gravity of the offence or its societal impact. It was thus observed:-

“9. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non conducive to fair trial, making it necessary to cancel the bail. This Court in *Daulat Ram and Others vs. State of Haryana* observed that:

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

10. These principles have been reiterated time and again, more recently by a 3 Judge Bench of this Court in *X vs. State of Telangana and Another*.

11. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a

Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system...”

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23. Thus, while considering cancellation of bail already granted by a lower court, would indeed require significant scrutiny at the instance of superior court, however, bail when granted can always be revoked if the relevant material on record, gravity of the offence or its societal impact have not been considered by the lower court. In such instances, where bail is granted in a mechanical manner, the order granting bail is liable to be set aside. Moreover, the decisions cited herein above, enumerate certain basic principles which must be borne in mind when deciding upon an application for grant of bail. Thus, while each case has its own unique factual matrix, which assumes a significant role in determination of bail matters, grant of bail must also be exercised by having regard to the above-mentioned well-settled principles.”

10. In a later judgment delivered in the case of **Phireram v State of Uttar Pradesh, (2022) 15 SCC 2011**, the Supreme Court after noticing the aforesaid quoted ratio, summoned up the principles or circumstances governing the cancellation of bail in the following manner:

24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] . To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court.”

(Emphasis supplied)

“25. Some of the circumstances where bail granted to the accused under Section 439(1)CrPC can be cancelled are enumerated below:

- (a) If he misuses his liberty by indulging in similar/other criminal activity;
- (b) If he interferes with the course of investigation;
- (c) If he attempts to tamper with the evidence;
- (d) If he attempts to influence/threaten the witnesses;
- (e) If he evades or attempts to evade court proceedings;
- (f) If he indulges in activities which would hamper smooth investigation;
- (g) If he is likely to flee from the country;
- (h) If he attempts to make himself scarce by going underground and/or becoming unavailable to the investigating agency;
- (i) If he attempts to place himself beyond the reach of his surety.
- (j) If any facts may emerge after the grant of bail which are considered unconducive to a fair trial.

We may clarify that the aforesaid list is only illustrative in nature and not exhaustive.”

11. From the foregoing analysis of legal position, it is clear that the bail when granted can be revoked, if the relevant material on record and gravity of offence or its societal impact have not been considered by the lower court. Besides this, the Superior Court can also cancel the bail granted to an accused, if any supervening circumstances have arisen or the conduct of accused post grant of bail shows that it will not be conducive to a fair trial to permit the accused to remain on bail during trial. The order granting bail can also be cancelled, if it is found to be illegal or perverse or it is based on material that is irrelevant.
12. With the aforesaid legal position in mind, let us now scrutinize the order passed by the learned trial court. As already stated, the learned trial court, while granting bail to the respondent-accused has taken note of certain circumstances, which according to the learned trial court, have emerged from the statement of the prosecutrix recorded during the trial of the case. These circumstances include non seizure of lighter used by the accused, non seizure of muffler used by the accused during commission of the crime and absence of spermatozoa on seized trouser(salwar) of the prosecutrix.
13. I am afraid the aforesaid circumstances noted by the learned trial court for doubting the veracity of the statement of the prosecutrix are wholly irrelevant. If the statement of the prosecutrix otherwise is reliable and she has withstood the rigors of cross examination, merely because lighter and the muffler used by the accused in the commission of crime have not been seized would not discredit the statement of the prosecutrix. Similarly, merely

because there was absence of spermatozoa on the seized trouser of the prosecutrix would not make her statement unreliable, if it is otherwise of sterling quality. It is to be noted that at the time of considering a bail application, it is not open to a trial court to undertake meticulous analysis of the evidence recorded during the trial of the case. A minor contradiction here and there with regard to the site of occurrence or the actual date of occurrence, particularly in a case where the prosecutrix is an illiterate lady, would not by itself be a ground to throw out her statement, particularly at the stage of considering bail application.

14. The learned trial court has clearly premised its order on the material, which is irrelevant. The Court has also fallen into grave error by undertaking a meticulous and detailed analysis of the prosecutrix evidence for arriving at a *prima facie* conclusion that the statement of the prosecutrix is unreliable.
15. A cursory look at the statement of the prosecutrix would reveal that there was no previous enmity between the parties that would have prompted her to falsely implicate the respondent. Not only this, there are other eye witnesses to the occurrence in the shape of the persons, who were present on spot and who saved the prosecutrix from the clutches of the accused. Their statements are yet to be recorded. Therefore, at this stage it was not open to the learned trial court to record a *prima facie* opinion that the respondent is not involved in the alleged crime.
16. The ground that the respondent-accused has been in incarceration for about 18 months, does not seem to be strong enough to enlarge him on bail because the charge against the accused came to be framed only on 11.04.2023 and within one year, thereafter, the prosecution has examined two material

witnesses, the prosecutrix and her father. Thus, it cannot be stated that there has been any undue delay on the part of the prosecution to produce its witnesses before the trial court. A mere delay of few months in trial of a heinous crime like rape would not in every such case lead to infringement of right of speedy trial of an accused so as to give him right to be enlarged on bail on this sole ground.

17. In addition to the above, the learned trial court has not taken into consideration the fact that the offence alleged to have been committed by the respondent is serious in nature carrying maximum punishment of life imprisonment. The severity of the offence becomes all the more grave because offence for which the accused is facing trial is an offence against women and granting bail in such cases at the very inception of the trial has a chilling effect on safety of women. The learned trial court, while granting bail to the respondent, has not considered the societal impact at all.
18. For the foregoing reasons, the impugned order passed by the learned trial court is illegal and perverse as the same is based on material, which is not relevant. Thus, this is a fit case where this Court should interfere with the impugned order passed by the learned trial court.
19. Accordingly, the present petition is **allowed** and impugned order dated 27.06.2024 passed by the learned trial court is set aside and the bail granted to the respondent-accused is cancelled. He is directed to surrender before the learned trial court within a period of one month from the date of this order, whereafter, the learned trial court shall remand him to custody. It shall be open to the respondent to apply for grant of bail afresh after the statements of other eye witnesses to the occurrence are recorded by the learned trial court.

It is further directed that the learned trial court shall take all necessary steps for recording the statements of the other eye witnesses by fixing a calendar and the prosecuting agency shall extend all cooperation in producing the said witnesses before the trial court.

20. A copy of this order be sent to the learned trial court for information with the direction that in case the accused does not surrender before the said court within the stipulated time, coercive process be issued for securing his presence before the said court.

(SANJAY DHAR)
JUDGE

Jammu
05.06.2026
Rakesh PS

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

