

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

BA No. 17/2019
IA No. 01/2019

Date of order: 06.02.2019

Mukhtar Ahmad Badoo & Ors.

Vs.

State & ors.

Coram:

Hon'ble Mr. Justice Rashid Ali Dar, Judge.

Appearing Counsel:

For Petitioner(s): Mr. S.T.Hussain, Sr.Advocate.
For Respondent(s):

- 1.** By the medium of instant petition, petitioners are praying for issuance of direction in terms of Section 497-A Cr.PC for their release on bail in case they are arrested in case FIR No. 120/2018, Police Station, Sumbal. The pleas taken in this regard are that petitioner No.1 and respondent No.5 had entered into marriage agreement and the same was solemnized for which reliance is placed on certain documents, copies of which are annexed with the petition. It is being also stated that in the earlier petition filed by petitioner No.1 and respondents No.5 bearing CRMC No. 368/2018, direction was passed for staying the operation of the FIR No. 120/2018 for commission of offences under

Section 366/109 RPC. The averments in the said petition are that being major they had contracted marriage out of their own free will and choice but to the disliking of the parents of respondent No.5 herein (girl). It is also being pleaded that the police is harassing the family members of petitioner No.1 herein under the garb of the referred FIR, therefore seeks its quashment through the said petition. The allegation levelled against petitioner No.1 is that he has abducted respondent No.5 herein while as the fact is that she had out of her own free will and consent contracted marriage with petitioner No.1 herein.

2. I have heard Mr. Hussain, learned senior counsel for the petitioners.
3. Learned counsel for the petitioners, in order to substantiate his arguments that the petitioners are entitled to the concession of bail in case of their arrest has taken reliance on some judgments of Hon'ble Apex Court including ***Gurbakash Singh Sikkia's*** case and ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra, (2011)SCC 730***. In later case relevant text which is being related is as:

"The proper course of action ought to be that after evaluating the averments and accusation available on the ground if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court

may either reject the bail application or confirm the initial order of granting bail.

The court would certainly be entitled to impose conditions for the grant of bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of bail any time if liberty granted by the court is misused. The bail granted by the court should ordinarily be continued till the trial of the case....”

4. Record of CRMC No. 368/2018, which was made available by the Registry for perusal of the Court, reveals that the interim direction having been passed on 24.09.2018, which had been clarified later vide order dated 31.10.2018 to the effect that the interim order dated 24.09.2018 shall not come in the way of learned Magistrate in considering the application pleading there, on its own merits and after hearing the petitioners therein and other side.
5. The status report filed in the said case on behalf of the police brings-fore the following facts:-

“That on 02.09.2018 applicant namely Gh. Mustafa Dar S/o Mohd. Ishaq Dar R/o Nowgam submitted a written complaint against accused persons namely (1) Mukhtyar Ahmad Batoo, (2) Altaf Ahmad Batoo sons of Ali Mohammad Batoo, (3) Mohammad Sultan Batoo and (4) Ali Mohammad Batoo sons of Ghulam Hassan Batoo, all residents of Nowgam police post Nowgam alleging therein that on 01.09.2018 the sister of the complainant left towards Degree College Sumbal for studies

but did not return back till late evening, upon this home people searched her but could not trace her out. During search it came to surface that the sister of complainant has been abducted by accused No.(1) with the intention of rape, with the abetment of other accused persons. Accordingly police post Nowgam entered report in Daily Dairy vide report No.07 dated 02.09.2018 and submitted the DD extract to P/s Sumbal for lodgement of FIR, thereafter case FIR No.120/2018 u/s 366, 109 RPC has been registered and investigation entrusted to ASI Ab. Rashid No.305/B of Police Post Nowgam. During the course of investigation site plan was drafted and statements of the witnesses were recorded u/s 161 Cr.PC, as per statement of witnesses Section 366, 109 RPC were substantiated against accused persons namely (1) Mukhtyar Ahmad Batoo, (2) Altaf Ahmad Batoo sons of Ali Mohammad Batoo, (3) Mohammad Sultan Batoo and (4) Ali Mohammad Batoo sons of Ghulam Hassan Batoo, R/O Nowgam. During the investigation accused persons namely (1) Altaf Ahmad Batoo son of Ali Mohammad Batoo (2) Mohammad Sultan Batoo (3) Ali Mohammad Batoo sons of Ghulam Hassan Batoo, R/o Nowgam have been arrested and arrest memo has been drafted. However, the main accused namely Mukhtyar Ahmad Batoo managed to give slip to the police party and escaped from the spot. The victim was produced before MOCHC Sumbal for medical examination, as per the medical report provided by the Medical officer, Section 376 RPC has been added in the instant case and the girl was handed over to her parents. Thereafter on 11.10.2018 the statement of abductee u/s 164-A Cr.PC has been recorded before the court of JMIC Sumbal. According to the statement of victim all the four accused persons have been found involved in commission of offences u/s 366, 109, 343, 506 RPC. However, on 20.10.2018 the police station received a stay order through DPO Bandipora issued by the High Court of J&K Srinagar dated 24.09.2010. That during investigation sufficient evidence has been collected and the commission of prima facie case has been established against the above named accused persons. As

such there arises no question of initiation of false and frivolous case against the petitioners.”

- 6.** Be it so, let a notice be issued to the other side for filing objections and for submitting present status of the investigation. In the meanwhile, it is directed that the present petitioners shall make themselves available to the investigating agency by or before next date and in case they are arrested in connection with FIR No. 120/2018 for commission of offences under Section 366/109 RPC, they shall be released on bail subject to furnishing bail by two sureties in the amount of Rs.50,000/- each to the satisfaction of concerned I.O, conditioned that the petitioners ;
- a) shall appear before the investigating agency as and when required and shall cooperate with it;
 - b) shall not leave the territory of the Valley without prior permission of concerned I.O;
 - c) shall not change their place of residence without permission; and
 - d) shall not hamper or tamper with the prosecution evidence.
- 7.** The Investigating agency is in particular directed to make its stand known regarding the allegations, if any levelled for commission of offences under Section 376 RPC by the respondent No.5 herein, who

as noted in the petition bearing CRMC No. 368/2018 is stated to be the wife of petitioner No.1 herein.

8. List on 28.02.2019.

(Rashid Ali Dar)
Judge

Srinagar
06.02.2019
Muzammil. Q