

Serial No. 81
Reg. Cause List

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

CrlA(S) 9/2025 CrlM(1023/2025)

Ghulam Mohammad Lone

.... Applicant/Appellant(s)

Through: Mr. M.I. Qadri, Sr. Advocate with
Mr. Tawheed Ahmad, Advocate
Vs.

**Union Territory Through
Police Station Kangan and Anr.**

.... Respondent(s)

Through: Mr. Waseem Gul, GA.

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER

08.10.2025

CrlA(S) 9/2025

1. The learned counsel for the parties submitted that they will argue the application for suspension of sentence on today and this main appeal may be permitted to be argued by them on the next date of hearing.
2. Submission as made is accepted.
3. List on **26.11.2025**.

CrlM (1023/2025)

4. Through the medium of the instant application filed in terms of provisions of Section 389 of the Code of Criminal Procedure, 1973, (now repealed but applicable in the instant case and hereinafter referred to as the 'Code' for short), the suspension of the common judgment of conviction and order of sentence dated 17.06.2025 passed by the learned Principal Session Judge, Ganderbal (hereinafter referred to as the 'Trial Court' for short) to the extent of order of sentence and the enlargement of the applicant/appellant on bail in the main appeal titled "Ghulam Mohammad Lone vs State through P/S Kangan" (FIR No. 27 of 2017), has been sought on the grounds that, the applicant/appellant was falsely

implicated in an FIR No. 27/2017, registered by Police Station Kangan, for commission of offences under Sections 376 & 451 RPC. That the allegations against the applicant/appellant are completely unfounded and not supported by any piece of evidence. That the prosecutrix had levelled the allegations against the applicant/appellant of committing rape upon her under a false promise of marriage. That the allegations by the prosecutrix, *ipso facto*, cannot be taken true, unless the same are corroborated by the unambiguous and uncontradictory evidence, at a criminal trial. That as per the evidence of the prosecutrix, recorded during investigation as well as at trial, if presumed true, it becomes crystal clear that the relationship between her and the applicant/appellant, was consensual. That the element consent therefore belies the allegations, levelled against the appellant and completely rules out the commission of alleged offences. That the judgment of conviction and order of sentence, therefore, is contrary to facts and evidence available on record.

That, none of the prosecution witnesses have supported the prosecution version of the case, before the learned trial court and in fact the prosecutrix has herself stated in the cross examination that at the time of the alleged occurrence, the applicant/appellant promised to marry her and after that he never ever either met her or visited her house, until she tested pregnant. That the statement of prosecutrix is clear enough to the effect that the act was a solitary one and there was no prior or subsequent promise of marriage, extended by the accused. That the act alleged therefore does not constitute offences under Sections 376 & 451 of RPC. That none of the witnesses have supported the case of the prosecutrix and, in fact, the DNA test has further corroborated the innocence of the accused. That the FSL report is also in favour of the applicant/appellant and the DNA report does not refer the applicant/appellant as the biological father of the child born to the prosecutrix. That the judgment of conviction and sentence is therefore non-est in the eyes of law.

That, in the statement recorded under Section 342 of Code, the applicant/appellant has clearly stated that the prosecutrix had never ever

any relationship with him and he has been falsely and maliciously implicated in the case. That the applicant/appellant has denied the allegation of impregnating the prosecutrix who is trying to shield some other person responsible for her pregnancy. That the applicant/appellant has categorically denied to have gone to the house of the prosecutrix and that he has been falsely implicated in the alleged offences.

That the standard of proof for recording conviction against the accused must be beyond the shadow of reasonable doubt, whereas the impugned judgment is not based on any evidence whether oral, scientific or other, which would permit recording of conviction and sentence against the appellant. That the DNA report clearly raises not only grave suspicion about the credibility of the prosecutrix statement, but also makes it clear that the indictment of the applicant/appellant in the matter is purely on the basis of mistaken identity and rivalry. That civilian witnesses produced by the prosecution to support its case are all related to the prosecutrix and the rest are the official witnesses like the Doctors, FSL experts and different investigation officers, who did not at all support the case of the prosecution.

That, at the time of lodging of FIR, the applicant/appellant was immediately arrested by the police station concerned and remained under custody for more than a year, whereafter, he was subsequently enlarged on bail, by the learned trial Court. That it is pertinent to mention that the ld. Trial Court was pleased to grant bail, in favour of the applicant/appellant only after the DNA report came in his favour. That the applicant/appellant was booked in a false and frivolous case, to hide the identity of the real culprit. That the applicant/appellant is in his tender age and the case in question has ruined his life being the only bread earner of his family, taking care of his old aged mother, suffering from serious old age complications and other, family members. That after the passing of the impugned judgment, the applicant/appellant has been re-arrested and is presently lodged in Central Jail, Srinagar.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the applicant/appellant Mr. M.I. Qadri, Sr. Advocate, while reiterating his stand already taken in the instant application as well as in the memo of appeal submitted that prima facie a ground appears to be made out in the facts and circumstances of the case for immediately suspending the impugned judgment of conviction and sentence at least to the extent of order of sentence. He contended that it is crystal clear from the evidence recorded at the trial that the alleged prosecutrix had voluntarily consented for the act who was an adult lady. He contended that the impugned judgment of conviction and sentence palpably suffers from illegality and perversity because it is apparent from the Para-58 of the impugned judgment, whereunder the learned Trial Court has recorded finding of conviction of the applicant/appellant, that accused has committed sexual intercourse with the alleged prosecutrix on the false premise of marriage without having any intention to marry her. He submitted that even if the finding of the learned Trial Court to this extent can be stated to be true for arguments sake yet, the appellant could not have been convicted at all because sexual intercourse on the pretext of false promise of marriage was not an offence before the coming into force of the BNS, 2023. That final finding regarding the conviction of the applicant/appellant as per Para-58 of the impugned judgment does not appear to be in accordance with the law i.e the provisions of Section 375 of the Indian Penal Code defining the offence of rape.

7. The learned counsel for the applicant/appellant further contended that the learned trial Court has not heard the applicant/appellant on the quantum of punishment and did not pass a separate order of sentence, thereby violating the express provisions of the Section 235(2) of the Code.

8. *Per contra*, the learned Govt. Advocate, very vehemently submitted that no ground is made out for suspension of the order of sentence because the applicant/appellant has been convicted upon a full-fledged trial that consumed about eight years of the learned Trial Court holding the applicant/appellant guilty of the offence under Section 376 IPC. He submitted that since the offence for which the applicant/appellant stands

convicted and sentenced to undergo a simple imprisonment for ten years with fine of Rs. 1 lac is highly anti-social, as such, the suspension of the sentence will encourage the like-minded persons who may repeat such offences. He contended that the learned Trial Court has recorded the judgment of conviction and order of sentence after fully appreciating the evidence recorded at the trial which established the guilt of the appellant.

9. I have perused the application in hand as also the main appeal. The arguments advanced by the learned counsel for the parties were also considered. The scanned copy of the trial court record especially the evidence adduced at the trial has been also perused.

10. The applicant/appellant has raised some facto-legal issues which need to be addressed in the main appeal.

11. Without commenting on the merits of the main appeal which is pending disposal, this Court is of the opinion that it may meet the ends of justice in case the impugned common judgment of conviction and order of sentence is suspended to the extent of order of sentence only with the enlargement of the applicant subject to some reasonable terms and conditions.

12. Accordingly, the application is allowed and the impugned common judgment of conviction and order of sentence is suspended to the extent of order of sentence only and the applicant/appellant is admitted to bail subject to his furnishing surety and personal bonds to the tune of **Rs. 1 lac each** to the satisfaction of the learned Registrar Judicial of this Court and the Superintendent of the Jail concerned.

13. This order shall, however, be subject to following conditions:

- I. The applicant/appellant shall remain punctual at the proceedings of the main appeal and shall not leave the limits of the UT of Jammu and Kashmir without the prior permission of this Court
- II. The applicant/appellant shall refrain from deliberately confronting the alleged prosecutrix.

14. In case the requisite surety bond is furnished to the satisfaction of the learned Registrar Judicial of this Court and attested by him, a formal release order shall be issued by the Registrar Judicial directing the release of the applicant/appellant in this case, from the place of his lodgment.

15. Application is **disposed of**.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR
08.10.2025
Shahid

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