

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

(Through Virtual Mode)

CRM (M) No. 368/2022

CrIM Nos. 577/2026, 758/2022

Reserved on: 24.04.2026

Pronounced on: 22.05.2026.

Uploaded on: 22.05.2026.

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

Pawan Kumar @ Raja
S/O Sh. Kuldeep Kumar.
R/O P/P/ Market, Purana Dhurdh
Tehsil Katra, District, Reasi.

...Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Advocate with Mr. Shubam Sharma, Advocate.

Vs.

1. Union Territory of J&K, th.
SHO P/S Katra, Reasi.

2. Miss X

...Respondent(s)

Through: Mr. Sumeet Bhatia, Government Advocate

CORAM:

HON'BLE MR. JUSTICE RAJNESH OSWAL JUDGE

JUDGMENT

1. This petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure for quashing the FIR No.116 of 2022 dated 23.04.2022, registered with Police Station Katra against the petitioner for the commission of offences punishable under Section 3/4 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 read with Section 376 and 506 of the Indian Penal Code.
2. It is stated that in the year 2011, a couple, named, Mr. Y and Mrs. Z, residents of Panjar, District Udhampur, migrated to Katra along with their minor children to seek employment as laborers due to extreme

penury. The mother of the petitioner, namely, Shani Devi, provided them with shelter, in consideration for which Mrs. Z performed various household chores assigned to her. Tragically, Mrs. Z passed away in the year 2014 during the delivery of her fifth child, and her husband, Mr. Y, subsequently expired in the year 2018. The deceased couple was survived by five children, four daughters, including Respondent No.2 herein, and one son, none of whose relatives came forward to either adopt or care for them.

3. It is further stated that following the demise of their mother, the children's father, Mr. Y, would occasionally take them to Panjar in District Udhampur, where he owned a parcel of land. In February 2021, two daughters of the deceased couple, including respondent No.2, left Katra under the pretext of ascertaining whether their paternal cousins were disposing of a portion of their family land. En route, they encountered their step-maternal grandfather, Balak Ram, who offered to escort them to their paternal uncle's house. Consequently, both girls, including respondent No.2, stayed at the residence of Balak Ram for approximately 15 to 20 days.
4. According to the account of the other sister, Balak Ram, while in a state of heavy intoxication, one night attempted to outrage her modesty by untying the drawstring of her *salwar*. She woke up, managed to flee, and returned to Katra the following morning. While she implored Respondent No.2 to return to Katra with her, Respondent No. 2 chose to remain with Balak Ram.
5. Respondent No.2 continued to reside with Balak Ram until February

2022, during which period she reportedly gave birth to a female infant. Upon learning of the birth, her paternal cousin, Shailu Ram, immediately reported the matter to Police Station Panchari, alleging that Balak Ram had raped respondent No.2, caused her pregnancy, and subsequently orchestrated the delivery of the child in the forest. A copy of this complaint has been placed on record by the petitioner as Annexure-2.

6. The petitioner further contends that although the concerned police authorities summoned Balak Ram for questioning, he wielded his influence to shift the blame onto the petitioner. On April 23, 2022, Balak Ram brought respondent No.2 to Police Station Katra and lodged a complaint written in Urdu. It was therein alleged that the petitioner had raped respondent No.2 and threatened her with death should she reveal his identity, thereby compelling her to flee through fear to her grandfather's home in Panjar, where she delivered a female child a month prior. The petitioner contends that respondent No.1, without scrutinizing the genuineness of this highly motivated complaint orchestrated by Balak Ram through respondent No.2, mechanically registered the impugned FIR.

7. The petitioner urges that had respondent No.2 been subjected to the repeated sexual assaults as alleged, she would not have failed to raise any alarm over such a protracted period, during which she conceived and delivered a female child. He further asserts that, in truth, respondent No.2 was subjected to rape by Balak Ram during her stay at Lower Saddal. It is contended that a comparative DNA analysis involving

Balak Ram would conclusively bring the true facts to light. The petitioner submits that Balak Ram, anticipating his imminent arrest for the crime, actively engineered and maneuvered the presentation of respondent No.2 to falsely implicate the petitioner in the alleged offense.

8. Respondent No.1 has filed two status reports, the latest being dated May 6, 2024. Therein, it is stated that the statement of the victim was recorded under Section 164 of Cr.P.C. before the learned Additional Special Mobile Magistrate, Reasi. The Investigating Officer also subjected the victim to an age determination examination at the Government Hospital, Sarwal, Jammu, where the Medical Board opined her age to be between 15 and 17 years at the time of examination. It is further stated that on July 12, 2022, the infant passed away due to dehydration at SMGS Hospital, Jammu. Subsequently, on July 15, 2022, DNA extraction of the deceased female infant was conducted at GMC, Jammu. Two exhibits were prepared, marked as Exhibit 'A' (containing the humerus bone) and Exhibit 'B' (containing hair samples with roots), which were sealed by the Medical Officer in the presence of the Naib-Tehsildar, Katra, and forwarded to the FSL, Srinagar, for DNA profiling and matching. Following the petitioner's arrest on February 11, 2024, his blood sample was sent to FSL, Srinagar, for comparison with the preserved DNA of the deceased infant. In the said status report, the prosecution sought permission to present the charge sheet, which has since been filed before the trial court pursuant to the order dated May 8, 2024, passed by a Coordinate Bench of this Court.

9. Learned senior counsel for the petitioner strenuously contends that since the charge sheet explicitly states that the DNA profile of the petitioner excludes him as the biological father of the deceased infant, the substratum of the prosecutrix's case stands demolished by scientific evidence. It is further submitted that the actual perpetrator of the offense was Balak Ram, who subjected respondent No.2 to sexual assault and fathered the child. He underscores that despite an explicit complaint preferred by Shailu Ram before the authorities at Police Station Panchari, the police remained completely unmoved and failed to take any action against the said Balak Ram.

10. *Per-contra*, Mr. Sumeet Bhatia, learned Government Advocate, appearing for respondent No.1, has contended that although the DNA profile report excludes the petitioner as the biological father, it cannot operate to nullify the statutory deposition of the prosecutrix recorded under Section 164 of the Cr.P.C. Learned G.A. submits that the ocular testimony of a victim of sexual assault stands on its own footing, and the impugned FIR cannot be quashed solely on the anvil of scientific evidence.

11. Heard and perused the record.

12. This Court has carefully perused the charge sheet placed on record. The victim (Respondent No.2) stated that the petitioner committed rape upon her, resulting in her pregnancy. She further deposed that she informed the petitioner's mother about the incident; however, the mother ignored her claims and expelled her from the house, forcing her to seek refuge at her maternal grandfather's (*Nana*) home. Notably, in the charge sheet

itself, the Investigating Officer has recorded that the DNA profile report excludes the petitioner as the biological father of the child (now deceased).

13. This Court cannot but express its astonishment at the slipshod manner in which the investigation was pursued. Despite conclusive scientific evidence demonstrating that the petitioner could not have fathered the child, the Investigating Officer failed entirely to take measures to unearth the identity of the actual perpetrator. It behooved the Investigating Officer to probe the matter further, so that the true paternity of the female child might be established.

14. Admittedly, respondent No.2 is a minor who has been subjected to sexual assault, resulting in pregnancy and subsequent birth of a female child. Since it has been established that the petitioner did not father the child, the identity of the individual responsible for sexually exploiting respondent No.2, and causing her pregnancy, remains altogether shrouded in mystery. It is evident that the Investigating Officer filed the charge sheet with undue haste, seemingly for the sole purpose of precluding the petitioner from obtaining default bail.

15. Be that as it may, the exceptional nature of this case precludes this Court from remaining a passive onlooker to the flawed manner of the investigation. If this Court does not exercise its jurisdiction to remedy this failure, the true culprit will escape unpunished and successfully elude the process of law. In *Devendra Nath Singh v. State of Bihar*, (2023) 1 SCC 48, the Hon'ble Apex Court has held as under:

“45. For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:

45.1. The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and

just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.

45.2. The powers of the Magistrate to ensure proper investigation in terms of Section 156CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8)CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.

45.3. Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8)CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8)CrPC do not limit or affect such powers of the High Court to pass an order under Section 482CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.

45.4. Even when the wide powers of the High Court in terms of Section 482CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

45.5. The powers under Section 482CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.

(emphasis added)

16. The petitioner has been already enlarged on bail and the Coordinate Bench of this court, while permitting the IO to file chargesheet, has restrained the court from taking cognizance till further orders, in terms of order dated 08.05.2024. In the peculiar facts and circumstances of the case, this Court deems it proper to direct Inspector General of Police, Jammu, to constitute a Special Investigating Team (SIT), to be headed by the Officer not below the rank of Superintendent of Police within a period of seven days from receipt of the order to further

investigate the matter, so as to unearth the identity of the true perpetrator responsible for sexually exploiting the helpless minor victim.

17.The learned Sessions Judge, Reasi is directed to return the charge-sheet to SHO, Police Station, Katra for further investigation in terms of above-mentioned directions. However, the prayer made by the petitioner for quashing the FIR is declined at this stage.

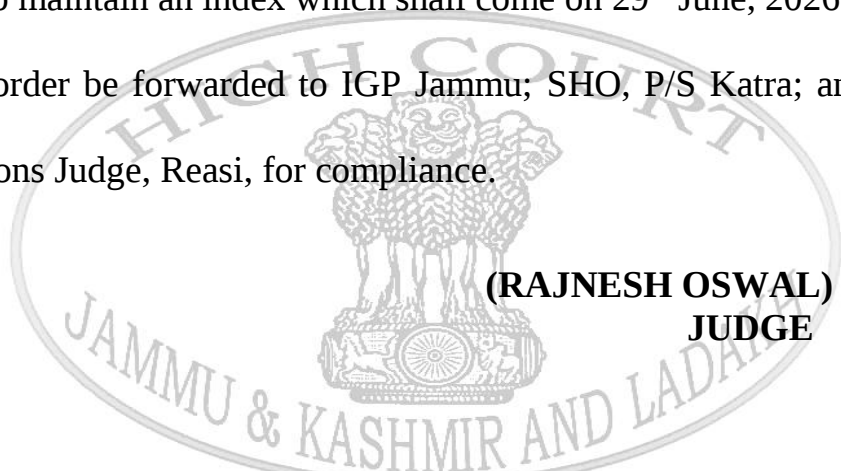
18.The petition is, accordingly, disposed of.

19.The IGP shall file status report with regard to the compliance of the directions issued by this Court as mentioned above by 29th June, 2026.

20.Let Registry to maintain an index which shall come on 29th June, 2026.

21.Copy of this order be forwarded to IGP Jammu; SHO, P/S Katra; and Learned Sessions Judge, Reasi, for compliance.

SRINAGAR:
22.05.2026.
“Ab. Rashid”



Whether the judgment is reportable: Yes/No.