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

CRM(M) No. 783/2026

Reserved on: 06.10.2026
Pronounced on: 28.10.2026
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Whether the operative part or full judgment is pronounced: *Full*

XXXX
(Name withheld)
…Petitioner(s)/Appellant(s)

Through: Ms. Zarin Ali, Adv.

Vs.

Union Territory of JK & Ors.
...Respondent(s)

Through: Mr. Numan Idrees Malik, GA

CORAM:

HON'BLE MR. JUSTICE YASH PAUL BOURNEY, JUDGE

JUDGMENT

1. The petitioner, who happens to be a minor and victim of rape, through this petition has herself questioned the legal process and has invoked the inherent jurisdiction of this court under Section 528 of BNSS for quashing the Charge-sheet filed against her alleged tormentor in furtherance to the FIR No. 72/2025 registered at Police Station Shalteng under Section 64 of the BNS-2023 and Sections 3 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act-2012") which is pending trial before the learned Special Judge, POCSO Court, Srinagar.

2. The factual matrix as revealed from the record and necessary for adjudication of the controversy is to the effect that on October 05, 2025 SHO Police Station Shalteng received a zero FIR from Police

Station, Pattan through email for necessary action. The said FIR was registered on the basis of telephonic information received from Dr. Mohammad Ashraf Bhat of Sub District Hospital, Pattan through Cell No. 7006946665 that a minor girl xxxx (name withheld) had delivered a female baby in the maternity ward of Hospital and she was accompanied by her mother and one Mohd Rafiq Sofi, who later on turned out to be the perpetrator of the alleged offence(s) and was arrayed as an accused.

3. On receipt of the said information, FIR No. 72/2025 for offences under Section 64 BNS, and Section 3/4 of POCSO Act came to be registered and investigation was commenced. During the course of investigation, statements of the victim, her parents and other material witness were recorded. Accused was apprehended and arrested in due course on 7th of October 2025. The DNA samples of the victim, the new born and accused were collected and forwarded to the FSL for profiling/comparison. A positive report was received in due course confirming that accused is the biological father of the newborn baby. The investigation further revealed that age of the victim at the time of delivery was 16 years, 3 months and 11 days. The medical examination of the accused also confirmed that he was potent and capable of performing sexual intercourse. It further came to fore that accused happened to be a distant relative of the victim who used to visit her house and frequently and at times had night stays also. It was during the course of those visits that he got access to and developed physical intimacy with the victim and committed sexual intercourse

with her repeatedly as a result of which she became pregnant and delivered the baby in due course.

4. Upon completion of the investigation, a Charge-sheet was laid before the competent court on 3rd December, 2025. The xerox copies of the records of court file of Charge-sheet together with the statements/ materials collected during the course of investigation has also been received. A perusal thereof would reveal that charges against the accused have been framed on 28th September 2026 only and victim is yet to depose as witness.

5. It has been argued by the learned counsel for the petitioner that petitioner-victim has been agitating right from the outset that she happens to be the legally wedded wife of the accused-respondent and their customary Nikah was performed on 21st September, 2024 in accordance with Muslim Personal Law however, 'Rukhsati' ceremony had not happened. A copy of the Nikah-nama is also placed on record and made part of the petition. It is stated that both the petitioner and respondent accused fell in love and eventually went on to develop physical intimacy which was purely consensual resulting into pregnancy. That accused accompanied the petitioner and her mother when she was taken to the hospital for delivery. That relationship being squarely consensual, there was no question of use of any force or deceit by the accused/respondent, so, as to meet the necessary ingredients of the offence as alleged in the Charge-sheet. It is also submitted that both of them are still madly in love and want to lead a happy and peaceful married life, however, the continued incarceration

of her husband is coming in their way since there is a difference of few years in her actual age and the age recorded in the school admission records which has resulted into the whole confusion.

6. It is argued that when petitioner who happens to be the star witness of the prosecution is herself denying repeatedly any forceful sexual assault on her person, there is hardly any possibility of the trial resulting into conviction. Therefore, it would be entirely an exercise in futility and wastage of the precious time of the court to proceed on with the trial of the accused. In these circumstances, the charge sheet is sought to be quashed.

7. Mr. Numan Idrees Malik, learned counsel for the respondent-State has vehemently opposed this petition on the grounds that petitioner has no locus to maintain this petition by invoking the extraordinary jurisdiction and that petition involves disputed questions of facts and law which cannot be gone into in exercise of the extraordinary jurisdiction by the court. It is further argued that victim who happens to be a minor has been subjected to sexual intercourse by the accused respondent and being minor her consent was immaterial no matter whatever she is saying now owing to her precarious position. She has after thoughts and the whole exercise is meant to save the accused from the consequences of the crime for which he has been charge sheeted. The trial is also at nascent stage and there is no occasion to exercise the extraordinary jurisdiction in the given circumstances.

8. I have considered the submissions made at bar and have also gone through the record of the Charge Sheet submitted by the trial court.

9. It needs to be flagged at the very outset that initial report with police is not lodged by the victim or her parents/relatives and the accused in the charge sheet was accompanying by the side of the victim when she was taken to the maternity hospital for delivery. The victim in her statement to the Magistrate under Section 164 CrPC has not been able to tell her exact date of birth but has narrated that she is 18+ as per the Vaccination Card but was 16 years of age as per her Adhaar Card. She further narrated that her nikah with the accused was solemnized on 20th October 2024 with the consent of her parents but she does not send to her matrimonial home instantly and afterwards some dispute arose between the two parties, so her parents were not agreeing to send her and wanted to marry her with someone else. However, she left her matrimonial home in January 2025 on her own. Thereafter she started living with her husband and eventually became pregnant. But when she was taken to the Sub-District Hospital Anantnag for delivery, Police was called by the doctors who frisked away her husband. That she wanted to lead a life with her husband since they were having a baby also, so her husband may be released. Her mother and father have also made depositions to the same effect. So clearly, it is a case of victim and accused having fallen in love and eventually solemnized Nikah even though she happened to be minor at that time. They have gone further to live together as husband and wife resulting into pregnancy of the victim and the delivery of the child in due course for which nobody is having any grievance. Since neither the victim nor her parents have ever come forward to complain of the sexual exploitation of the victim. It is only when the victim was taken

to the hospital for delivery by her mother and the accused that doctor concerned informed the police on finding the girl to be minor. Although she herself has disputed her age yet this vital aspect has not been investigated in detail.

10. The cases of young couples having indulged in physical intimacy and the female partner being eventually found short of age of majority while as the male partner having landed in the dragnet of law on are not uncommon ever since the enactment of the POCSO Act, 2012. One of the much-avowed objects of the enactment has been to protect the children from sexual abuse and exploitation. This provision, though definitely intended to target sexual exploitation of children, however, has created a grey area as it has definitely resulted in criminalizing consensual adolescence/teenage relationship and after the POCSO Act raised the age of consent from 16 to 18. An act of sexual indulgence with a girl below 18 years, would attract the rigors of the POCSO Act as well as the offence under Section 376 of IPC even in case of a consensual sexual activity since law presumes that a girl below 18 years is incapable of consenting to sexual intercourse. In such a scenario, even if a girl below 18 consented to a sexual intercourse, her consent has to be ignored and the other party shall be guilty of committing an offence under the POCSO Act.

11. It is often contended by the stringent provisions of POCSO Act operate too harshly against the male partners who have just crossed-over the age bar notwithstanding the fact that a female partner was an equal partner to the sexual intimacy when the relationship was simply

consensual. Confronted with such situations, Hon'ble Supreme Court has time and again emphasized that criminal courts must not ignore the social realities and the judicial processes must support the survival and protection of the families rather than mechanical punitive actions since the future of a family is at stake especially when the parties wish to live peacefully. Confronted with the situation, Hon'ble Supreme Court has gone to the extent of proposing an amendment in the POCSO Act and to introduce a Romeo-Juliet clause in order to carve out an exception for the young love-birds from falling in trap of the stringent provisions of the Act.

12. In **State of UP vs. Anurudh & Anr.** (Petition for Special Leave to Appeal (Crl) No. 10656 of 2025) reported at **2026 INSC 47** Hon'ble Supreme Court approved the High Court's view in **Satish alias Chand vs. State of UP** (Crl. Misc. Bail Appl. No. 18596 of 2024) to the effect that four factors are crucial for the Courts to consider in deciding a prosecution under the POCSO Act had held:

> "A. Assess the Context: Each case should be evaluated on its individual facts and circumstances. The nature of the relationship and the intentions of both parties should be carefully examined.
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> B. Consider Victim's Statement: The statement of the alleged victim should be given due consideration. If the relationship is consensual and based on mutual affection, this should be factored into decisions regarding bail and prosecution.
>
> C. Avoid Perversity of Justice: Ignoring the consensual nature of a relationship can lead to unjust outcomes, such as wrongful imprisonment. The judicial system should aim to balance the protection of minors with the recognition of their autonomy in certain contexts. Here the age comes out to be an important factor.
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> D. Judicial Discretion: Courts should use their discretion wisely, ensuring that the application of POCSO does not inadvertently harm the very individuals it is meant to protect."

Hon'ble Supreme Court went further by calling upon the Secretary, Law, Government of India to consider introduction of a Romeo-Juliet Clause exempting genuine adolescent relationship from the stronghold of the POCSO Act.

13. Confronted with a similar situation, Hon'ble High Court of Calcutta, Circuit Bench at Port Blair in **Roshan Lakra vs. The State and Anr.** (CRA No 4/2024) wherein a minor student of 7th standard entered into physical relationship and eventually became pregnant and later on delivered a female baby at the hospital. On attaining the age of majority, she married to the petitioner (accused) and became pregnant again. Faced with the situation, the Hon'ble Court came to hold as under:

> 32. The question then is, what should we do? Should we dismiss these appeals knowing that same would almost certainly result in rapid disintegration of Roshan's family leading to the family's annihilation? Or, should we take a view within the four corners of law that would terminate the prosecution once and for all enabling Roshan to be with his family and nurture the family as its paterfamilias.
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> 33. I have no doubt in my mind that we should adopt the second course of action. Indeed, upholding the conviction in the facts of the present case, would bring the justice delivery system into shame, odium and contempt.
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> 34. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Article 21 has been interpreted by the Hon'ble Supreme Court in a vast number of cases, as encompassing a wide variety of rights. It has been held that one such right is the right to marry or choose a life partner. It was held in Shafin Jahan v. Asokan

K.M. and Ors. reported at (2018) 16 SCC 368: AIR 2018 SC 1933 that right to marry a person of one's choice is an integral aspect of Article 21 i.e., protection of life and personal liberty. In Lata Singh v. State of U. P. & Anr., reported at (2006) 5 SCC 475: AIR 2006 SC 2522, Hon'ble Supreme Court recognised the right to marry as a part of right to life under Article 21 of the Constitution of India. The right to live a happy and healthy married life is therefore a citizen's fundamental right. Anjali has highlighted this right of her in the petitions that she has filed in connection with these appeals. Rohan also has the same right. It cannot be gainsaid that Article 21 would override any other provision of law if there is a conflict between the two. For example, it is now well established that notwithstanding the restriction in Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), bail can be granted to an under-trial charged with an offence under the NDPS Act, on the touch stone of Article 21, if he is detained in custody for an inordinately long period of time without the trial coming to an end. Similarly, Article 21 overrides the restriction on grant of bail in Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967.

14. Section 528 of BNSS, which is *pari materia* of Section 482 of the CrPC 1973, saves the inherent powers of this Court to make such orders as may be necessary to give effect to any order of this Court or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This Section has been given overriding effect to act ex debitio justitae to do real and substantial justice for the administration of which alone it exists, or to prevent abuse of the process of the Court. The observations of the Hon'ble Apex Court in the case of **Ram Gopal & Anr. vs. State of Madhya Pradesh** reported at **(2022) 14 SCC 531** are worth noting and the relevant para reads as hereunder:

"11. True it is that offences which are "non-compoundable" cannot be compounded by a criminal court in purported exercise of its powers under Section 320 CrPC. Any such attempt by the court would amount to alteration, addition and modification of Section 320 CrPC, which is the exclusive domain of legislature. There is no patent or latent ambiguity in the language of Section 320 CrPC, which may justify its wider interpretation and include such offences in the docket of "compoundable" offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 CrPC is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 CrPC. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 CrPC in aid to prevent abuse of the process of any court and/or to secure the ends of justice.

12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 CrPC, even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyse the very object of the administration of criminal justice system."

15. Considered in the backdrop of the above discussion, the prosecutrix in the present case was hardly sixteen years of age when she got involved into physical relationship with the accused both of them having been in romantic relationship, still she being falling within the definition of a 'child' under POCSO Act, the sexual intercourse with her would attract the offence under the

POCSO Act since she has not attained the age of consent. Therefore, accused can't escape from the consequences of his errant behaviour when he was fully aware of the age of petitioner. The case set up by the petitioner victim that both of them are madly in love and have already entered into Nikah. She has further contended that she has already moved to and is presently staying in her matrimonial home. She has claimed that her parents were well aware and they neither objected to their relationship and nor complained to anybody about their relationship. Even if all these factors are taken together still the offence for which accused has been charge sheet does not get wipe out. All these factors can at the best be described as the mitigating factors entitling the accused to bail, but cannot be reason to quash the charge sheet. Lastly, the victim is a minor and she has herself come up with this petition without being represented by a guardian and as such was not competent to and couldn't have invoked the extraordinary jurisdiction of this Court.

16. Thus, having carefully considered the submissions made at bar, this Court finds no merit in this petition.

17. This petition, therefore, fails and is dismissed.

(YASH PAUL BOURNEY)
JUDGE

SRINAGAR:
28.10.2026
Altaf

Whether approved for reporting? Yes/No