

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

Bail App No. 191/2022

Vinod Kumar

...Appellant/Petitioner(s)

Through:- Ms. Rozina Afzal, Advocate.

V/s

Union Territory of J and K

...Respondent(s)

Through:-

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

1. Bail in anticipation of arrest is being sought by the applicant/petitioner herein on the premise that one, Tara Devi D/o Girdhari Lal R/o Padyari, Kathua in connivance with her mother Kailasho Devi are hell-bent to tarnish the life and reputation of the applicant by forcing him to marry the said Tara Devi as the father of the said Tara Devi and her mother have an eye on the petitioner due to his job in ITBP and have started series of harassment through phone calls and having taken his signatures on various agreements and blackmailing him.
2. It is being stated in the application that the said Tara Devi and her family members have been calling the applicant day in and day out having involved one Pushpa Devi as well to force the applicant to marry Tara Devi.
3. It is being further stated that the applicant is not inclined to marry the said Tara Devi and on account of the same the said Tara Devi and her family members are threatening the applicant of registration of a case under Section 376 IPC notwithstanding the fact that a marriage agreement came to be executed by the applicant herein in this regard under pressure with said Tara Devi notarized on 19.03.2022.

4. It is being also stated in the application that the applicant despite being asked to solemnize marriage with Tara Devi in Arya Samaj Mandir after execution of marriage agreement, the said Tara Devi has gone to the Sakhi Centre and Women Cell, Kathua and lodged a false complaint against the applicant and one of the friends of the said Tara Devi working in the said Sakhi Centre are threatening the applicant of registration of a case under Section 376 IPC. The applicant also states to have filed a complaint before the Chief judicial Magistrate, Jammu under Section 156 (3) Cr. P.C. in this regard wherein the said Court has directed the Police Station, City Chowk to hold an enquiry. The marriage agreement entered with the said Tara Devi is also stated to have been challenged before the Civil Court.

5. It is thus, stated in the application that on account of the aforesaid facts and circumstances the applicant has a reasonable apprehension that he would be arrested in false and frivolous case at the behest of the said Tara Devi.

Heard learned counsel for the applicant and perused the record.

6. Perusal of the record reveals that the applicant has directly approached this Court under Section 437 Cr. P.C. seeking bail in anticipation of arrest through the medium of the instant application without approaching the Court of first instant i.e., the Court of Sessions.

7. Law is no more res integra and there is a long line of decisions of various High Courts that before filing a bail application before the High Court, remedy before the Sessions Court shall be exhausted unless there are strong, cogent and compelling reasons spelt out. A similar view has been taken by this Court in case titled as *“Abas Hussain Shah vs. Union Territory of J&K” (Bail App. No. 37/2021)*, wherein following has been observed:-

“Thus, there are catena of judgments on the issue. The common thread that runs through all these judgments is that Section 438 Cr.P.C. though confers concurrent jurisdiction on the High Court and the Sessions Court to grant bail in anticipation of arrest, yet an application should ordinarily be filed before the Sessions Court at the first instance and not directly before the High Court. For filing an application directly before the High Court, the applicant has to demonstrate and satisfy the High Court that there exist exceptional rare or unusual reasons for the applicant to approach the High Court directly.”

8. Perusal of the instant application would reveal that no such exceptional, rare or compelling reasons have been detailed or spelt out by the applicant in the instant application compelling him to institute instant application before this Court directly instead of filing same in the Sessions Courts, in the first instance.

9. Having regard to the aforesaid position, the instant application is dismissed as being not maintainable. However, the applicant is at liberty to approach the Sessions court if so, advised for seeking bail in anticipation of arrest.

(JAVED IQBAL WANI)
JUDGE

Jammu
31.05.2022
Renu