

# Asif vs Union Territory Of J&K And Others on 5 February, 2025

**Author: Rajnesh Oswal**

**Bench: Rajnesh Oswal**

Serial No. 162

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU

Bail App No. 286/2024  
c/w  
CRM(M) No. 903/2024

Asif

.....Appellant(s)/Petitioner(s)

Through: Mr. Pranav Kohli, Sr. Adv with  
Mr. Farhan Mirza, Adv.

vs

Union Territory of J&K and others

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy.AG for No. 1  
Mr. Nakul Sharma, Adv. for No. 2

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE  
ORDER

05.02.2025 CRM(M) No. 903/2024

1. Despite repeated opportunities, reply to the main petition has not been filed.

Last and final opportunity is granted to the respondents to file response.

2. List as above.

1. This is an application seeking bail in anticipation of arrest in FIR No. 0267/2024 dated 19.11.024 registered with Police Station, Domana, Jammu respondent No. 1 herein under section 376 IPC at the instance of respondent No. 2.

2. It is stated that the petitioner is serving in the Indian Army and currently posted at Tsogtsalu, District Leh and has never committed any offence but despite that the petitioner has been implicated in a false and frivolous FIR mentioned above. It is further stated that respondent No. 2 being a friend of the common friends of the petitioner, came in contact with the petitioner and they had casual conversation on various occasions over the social media platform with each other since 2014 and were in consensual relationship with each other for the last ten years. The respondent No.

2 also visited the home of the petitioner many times during the period of last ten years along with her brother and mother and during this period, there was very cordial relationship between both the families. The family of the petitioner was approached by respondent No. 2 along with her family, however, certain differences erupted between them due to which, they parted their ways. The petitioner requested the respondent No. 2 to return his car which she had taken to meet her requirements of post death rituals of her brother. It is stated that the FIR has been lodged only to harass the petitioner.

3. The respondent No. 1 has filed the reply stating therein the factual aspects of the case and has stated that the statements of the victim and other witnesses have been recorded before the Magistrate. Further, the medical examination of respondent No. 2 has also been conducted and the offence under section 376 IPC has been established against the petitioner.

4. Mr. Pranav Kohli, learned Senior Counsel for the petitioner has drawn the attention of this Court towards the agreement entered into between the petitioner and respondent No. 2 to demonstrate that the petitioner and respondent No. 2 had settled the dispute on 30.10.2024, thereby they agreed that their marriage shall be performed in accordance with Muslim law and due to misunderstanding, respondent No. 2 had filed a complaint against the petitioner before the Incharge Police Post, Chinnore but with the help of the parents, they have settled the dispute. He has further drawn attention of this Court towards the application filed by the petitioner against the respondent No. 2 and her mother for registration of FIR for commission of offences under sections 316(1), 351(3) and 318(4) of BNS to demonstrate that the FIR in question has been registered as a counter blast to the application mentioned above. He has further drawn the attention of this Court towards the application filed by the petitioner on 09.11.2024, to submit that the FIR in question was lodged by respondent No. 2 on 19.11.2024.

5. Per contra, learned counsel for respondent No. 1 has argued that the investigation is complete and offence stands established against the petitioner, therefore, the petitioner is not entitled to any concession of bail.

6. Mr. Nakul Sharma, learned counsel for respondent No. 2 has argued that the petitioner has not only violated the agreement entered into between the parties but also sexually exploited the respondent No. 2 and as such, he does not deserve to be enlarged on bail.

7. Heard and perused the record.

8. A perusal of the FIR reveals that the respondent No. 2 submitted an application for registration of FIR against the petitioner alleging therein that the petitioner and respondent No. 2 had been in relationship since 2014 while she was studying in class 11th. She was sexually abused by the petitioner, whereupon she was shown her nude videos and the respondent No. 2 has been blackmailing and sexually abusing by the petitioner ever since then. It is stated that in the month of June 2024, the petitioner assaulted her and raped her again and also prepared some videos. On receipt of this application, FIR No. 0267/2024 under section 376 IPC was registered on 19.11.2024 and in the FIR, the period of occurrence has been shown as 01.01.2014 till 30.06.2024 though in the

FIR, no date of occurrence has been mentioned.

9. The petitioner has placed on record the agreement entered into between the petitioner and respondent No. 2 and also the application for registration of FIR submitted by the applicant/petitioner before the Chief Judicial Magistrate Udhampur. Though the application does not bear any date but it appears that it must have been filed before 21.11.2024, but at the same time, learned Senior Counsel has submitted that the said application was filed on 09.11.2024, whereas FIR in question has been registered by respondent No. 2 on 19.11.2024. A perusal of the Case Diary reveals that the statement of the prosecutrix, respondent No. 2 herein has been recorded.

10. Be that as it may, there is an admission on the part of respondent No. 2 that the petitioner and respondent No. 2 have been in relationship since 2014 though she has alleged that she has been sexually assaulted from 2014 till 2024. The agreement placed on record by the petitioner has not been denied by the respondent No. 2. Rather the learned counsel for respondent No. 2 has submitted that the FIR was lodged only when the petitioner backtracked from the agreement dated 30.10.2024.

11. It appears that the petitioner and respondent No. 2 were in relationship with each other and because of certain differences, their relations got strained which led to the filing of the complaints against each other. The defence raised by the petitioner at this stage cannot be considered as baseless or misconceived which may deserve rejection at the threshold, as such, this Court is of the considered view that the petitioner has succeeded in making out a case for protection from arrest. The petitioner is in Indian Army and as such there are no prospects of his jumping over the bail.

12. In view of the above, in the event of arrest of the petitioner, he shall be enlarged on bail, subject to following conditions:

(i) that he shall furnish two solvent sureties to the tune of Rs.

50,000/- each to the satisfaction of the Investigating Officer and personal bond of the like amount.

(ii) that he shall appear before the Investigating Officer from 11.02.2025 till 15.02.2025 from 10.00 AM to 04.00 PM.

(iii) that in the event any recovery is effected from the petitioner, he shall be deemed to be in custody in terms of proviso to section 23 of the Bharatiya Sakshya Adhiniyam(BSA), 2023.

(iv) that he shall not leave the territorial jurisdiction of the UT of J&K and UT of Ladakh.

13. Mr. P. D. Singh, learned Dy.AG shall file report with regard to the compliance of conditions imposed by this Court on the next date of hearing.

14. List on 17.02.2025.

(RAJNESH OSWAL) JUDGE Jammu 05.02.2025 Rakesh