
(2022) 05 J&K CK 0028

Jammu And Kashmir High Court (Srinagar Bench)

Case No: Bail Application No. 124 Of 2021

Sajad Ahmad Khan

APPELLANT

Vs

Ut Of J&K

RESPONDENT

Date of Decision: May 11, 2022

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 437(1)(i), 439
- Indian Penal Code, 1860 - Section 307, 498, 498A

Hon'ble Judges: Sanjay Dhar, J

Bench: Single Bench

Advocate: Wani Manzoor, Usman Gani

Final Decision: Allowed

Judgement

Sanjay Dhar, J

1) The petitioner has invoked the jurisdiction of this Court under Section 439 of Cr. P. C seeking bail in a case arising out of FIR No.17/2021 for

offences under Section 307, 498 IPC registered with Police Station, Mattan, Anantnag.

2) Briefly stated, the case of the prosecution is that on 29.03.2021, the complainant, who happens to be the brother of the victim, lodged a report with

the police alleging therein that his sister, PW-Shogi Jan, had entered into a wedlock with petitioner/accused and that he used to subject her to cruelty.

It was further alleged that on 24th of March, 2021, the petitioner/accused sprinkled kerosene oil upon his wife/victim and set her ablaze within an

intention to kill her. The victim received grievous burn injuries and she was taken to hospital at Anantnag wherefrom she was referred to hospital at

Srinagar for further treatment. On receipt of this report, police registered the FIR and started investigation of the case. The petitioner was arrested on 30.03.2021. In the meantime, the victim was discharged from the hospital on 04.04.2021. After investigation, offences under Section 307, 498A IPC were found established against the petitioner and charge sheet was laid before the trial court.

3) It has been contended by the petitioner that on the basis of some trivial issue, there was usual exchange of words between him and his wife and it is

the victim who set herself on fire and that he has not committed any offence. It is averred that the allegations levelled in the FIR and the challan

against the petitioner are frivolous and baseless. It is further averred that the relation between the petitioner and his wife have not remained smooth as

the victim used to quarrel with him on petty issues. It is further averred that the matter was settled by Anjuman-e-Auqaf Markazi Jamia Masjid,

Gopalpora but in spite of that, the FIR came to be lodged by the brother of the victim. It is contended that the petitioner is entitled to bail as his liberty

cannot be curtailed on the basis of false and frivolous allegations. It is further averred that the petitioner is ready to abide by all the conditions that may

be imposed by this Court in case he is admitted to bail.

4) The petition has been resisted by the respondents by filing a reply thereto. In their reply respondents have reiterated the allegations made in the

challan against the petitioner. It has been contended by learned counsel for the respondents that the offences committed by the petitioner are of very

serious nature, as such, he does not deserve the concession of bail.

5) I have heard learned counsel for the parties and perused the material on record.

6) It appears that prior to filing of this application, the petitioner had approached the trial court for grant of bail during the investigation of the case. The

said application was dismissed by the learned trial court vide its order dated 28.06.2021 by observing that the investigation of the case is still in

progress and that the allegations against the petitioner are of serious nature. The trial court record reveals that the charge sheet has been filed against

the petitioner and even the charges have also been framed against him. It is also revealed that the statement of the victim and two more prosecution

witnesses have been recorded by the trial court.

7) Before coming to the merits of the rival submissions made by the parties, it would be apt to notice the principles governing the grant or refusal of

bail. The same have been elucidated in a number of judgments rendered by the Supreme Court and this High Court. These principles may be

summarized as under:

â€œ(i). The nature and gravity of the accusation and the exact role of the accused;

(ii). The position and status of the accused vis-Ã -vis the victim/witnesses;

(iii). The likelihood of the accused fleeing from justice;

(iv). The possibility of the accused tampering with the evidence and/or witnesses and obstructing the course of justice;

(v). The possibility of repetition of the offence;

(vi) The prima facie satisfaction of the Court in support of the charge including frivolity of the charge;

(vii) Stage of the investigation;

(viii) Larger interest of the public or the State;

8) In the light of the foregoing principles, let us now analyses the facts and circumstances of the instant case. There is no doubt to the fact that the

allegations levelled in the charge sheet against the petitioner are of very serious nature. The petitioner is alleged to have subjected the victim, who

happens to be his wife, to cruelty and has set her ablaze which resulted in serious burn injuries to her. The victim remained hospitalized for more than

ten days. The severity of the allegations and the punishment in case of conviction is definitely a factor to be taken into consideration while considering

a bail plea of an accused but the same is not the only factor to be taken into consideration.

9) Section 437(1)(i) of the Cr. P. C imposes certain restrictions and conditions regarding grant of bail to an accused. It provides that a person cannot

be released on bail if there appear reasonable grounds for believing that he is guilty of an offence punishable with death or imprisonment for life. Thus,

if a person has been charged for an offence which carries punishment of death or imprisonment for life, there is a statutory bar to the grant of bail.

This statutory bar has to be kept in mind even while dealing with a bail application filed under Section 439 of the Cr. P. C. The petitioner in this case

has been charged for offences under Section 307, 498A IPC. The offence under Section 307 IPC carries maximum punishment of imprisonment for

life or imprisonment for ten years and fine whereas offence under Section 498A IPC carries maximum punishment of imprisonment for three years

and fine. Thus, none of these offences is punishable with death sentence or imprisonment for life. Therefore, rigor or Section 437(1)(i) of the Cr. P. C

is not applicable to the instant case. The grant of bail to the petitioner, therefore, has to be considered in the light of well-recognized principles

governing the exercise of discretion in such matters.

10) It is a settled position of law that grant of bail is a rule whereas its refusal is an exception. The question whether bail should be granted in a case

has to be determined on the basis of the facts and circumstances of that particular case. A Coordinate Bench of this Court, while discussing the

principles to be followed in a case where exercising discretion in matters relating to grant or refusal of bail, has, in the case of Mehraj-ud-Din Nadroo

and others Vs. State of J&K (BA No.74/2018 decided on 07.07.2018), observed as under:

“9. The settled position of law as evolved by the Supreme Court in a catena of judicial dictums on the subject governing the grant of bail

is that there is no strait jacket formula or settled rules for the use of discretion but at the time of deciding the question of "bail or jail" in

non-bailable offences. Court has to utilize its judicial discretion, not only that as per the settled law, the discretion to grant bail in cases of

non-bailable offences has to be exercised according to rules and principle as laid down by the Code and various judicial decisions. In bail

applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused

person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be

considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe

more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly

tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses, if left at liberty, save in the most extraordinary circumstances.

Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

10. The word "judicial discretion" has been very well explained by an eminent jurist Benjamin Cardozo. In the words of Benjamin Cardozo

The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity of order in the social life. Wide enough in all conscience is the field of discretion that remains." Even so, it is useful to notice the tart terms of Lord Camden that "the discretion of a Judge is the law of tyrants. It is always known, it is different in different men; it is causal, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice, in the worst, it is every vice, folly and passion to which human nature is liable.

11) In the light of the afore-quoted principles, let us now advert to the facts of the instant case. The investigation, in the instant case, has already been completed and the charge sheet stands already filed. The charges have been framed against the petitioner and even statements of three prosecution witnesses including statement of the victim have been recorded. If we go to the statement of the victim recorded during the trial of the case, she has stated that her marriage with the petitioner has taken place about nine years back and that she was having a tiff with her husband, as is the case in every other marriage. She has further stated that she has never lodged any report against the petitioner nor has she ever made any complaint against him before anybody because the petitioner has never offered an occasion to her to make any such complaint. She has also stated that the occurrence took place because of the attitude of family members of the petitioner. She has gone on to state that she has no complaint against the petitioner as she has settled the matter with him and that she wants the petitioner to be released.

12) Having regard to the nature of statement made by the victim before the trial court and without commenting upon the merits of the case, it can safely be stated that the petitioner has been able to carve out a case for grant of bail in his favour.

13) Apart from the above, the petitioner has been behind the bars for last more than one year and trial of the case has progressed substantially, inasmuch as statements of a number of material witnesses have been recorded. Thus, there is no apprehension of the petitioner tampering with the prosecution witnesses in case he is admitted to bail. Any further incarceration of the petitioner, in these circumstances, would amount to imposing pre-trial punishment upon him which is impermissible in law.

14) For the foregoing reasons, I find the present case fit one where the petitioner should be enlarged on bail. Accordingly, the petition is allowed and the petitioner is admitted to bail in FIR No.17/2021 for offences under Section 307, 498A IPC of P/S Mattan, Anantnag, subject to the following conditions:

(I) That he shall furnish bail bonds/personal bonds in the sum of Rs.50,000/ each with one surety of like amount to the satisfaction of the learned trial court;

(II) That he shall appear before the trial court on each and every date of hearing;

(III) That he shall not tamper with the prosecution witnesses;

(IV) That he shall not leave the territorial limits of Union Territory of Jammu and Kashmir without the prior permission of the trial court;