
(2022) 07 J&K CK 0006

Jammu And Kashmir High Court

Case No: Bail Application No. 84 Of 2022, Criminal Miscellaneous Cases No. 306 Of 2022

Inder Kumar

APPELLANT

Vs

Union Territory Of J&K

RESPONDENT

Date of Decision: July 4, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 21
- Narcotic Drugs And Psychotropic Substances Act, 1985 - Section 8, 15, 27A, 29, 37

Hon'ble Judges: Javed Iqbal Wani, J

Bench: Single Bench

Advocate: Tariq Mughal, Sumeet Bhatia

Final Decision: Disposed Of

Judgement

Javed Iqbal Wani, J

1. Through the medium of instant application, petitioner prays for grant of bail in FIR No.53/2021 for offences punishable under Sections 8/15/29 Of

NDPS Act, registered at Police Station Rehmbal, Udhampur.

2. The background facts as stated in the application would reveal that the petitioner herein owns a shop/dhaba at Jhajjar Kotli, Jammu-Srinagar

National Highway and got arrested by the respondent from the said shop/dhaba on 19.03.2021 while recovering and seizing cash of Rs. 5 lacs which

according to the petitioner had been saved by him for the purchase of a plot at Jhajjar Kotli Jammu from one Sohan Singh S/o Inder Singh R/o Jhaggar

Kotli against an amount of Rs. 9 lacs out of which had paid the said Sohan Singh of Rs. 1,50,000/= and was supposed to pay rest of the sale

consideration before 27.03.2021.

3. It also gets revealed that after completion of the investigation in the said FIR, charge sheet for commission of offences under Sections 8/15/29 27-

A/29 of NDPS Act, came to be laid on 26.04.2021 by the police concerned against the applicant. It further gets revealed that trial court discharged the

petitioner herein for the commission of the offences under Section 27-A NDPS Act, however, charged the petitioner for commission of offences

under Section 8/15 and 29 of the NDPS Act.

4. It also gets revealed that prior to the filing of the instant application, petitioner filed an application for grant of bail before the trial court being

Sessions Court, Udhampur, on 09.10.2021 which, however, came to be dismissed in terms of order dated 27.10.2021.

5. According to the prosecution version on 19.03.2021 Ct. Anukh Raina had brought a docket at Police Post Tikri having been send by HC Abdul

Qayoom camp PataMand NHW which docket provided that a police party comprising HC Abdul Qayoom, Ct. Ankush Raina, Ct. Vikas Sharma and

SPO Gulzar Singh while performing nakah duty at Mandpattha National Highway stopped one tanker/vehicle bearing registration number JK01N-4703

coming from Udhampur towards Jammu and during checking of the said vehicle, 50 plastic bags containing poppy straw were recovered and during

the course of questioning of driver namely Vinod Kumar @ Ashok Kumar disclosed that Inder Kumar @ Nishu and he in furtherance of a criminal

conspiracy bought the contraband from Kashmir and had to deliver the same to the accused No.2 being the petitioner herein and during the course of

investigation at the instance of accused No.1 an amount of Rs.5 lacs was recovered in the shape of 10 bundles of denomination of Rs.500 and 01

bundle denomination of Rs.100 from accused No.2 petitioner herein.

6. According to the prosecution version, the petitioner herein and the other accused persons hatched criminal conspiracy and got the contraband

transported through accused No.1 from Srinagar to Jammu and that the involvement of the petitioner in commission of offences which surfaced during

the course of investigation upon recovery of the amount of Rs.5 lacs, weighing balance as also from the call details divulging contact of the petitioner

herein with the co-accused got established.

Heard learned counsel for the parties and perused the record.

7. According to learned counsel, the petitioner came to be arrested by the respondent without any reason on the statement of the co-accused namely

Vinod Singh and that the petitioner had no connection with co-accused Vinod Singh.

8. Learned counsel for the petitioner would further contend that recovery of alleged contraband was never ever recovered from the petitioner by the

investigating agency and that the amount of money recovered in fact had been saved by the petitioner for the purchase of the plot of land from one

Sohan Singh to whom the petitioner had already paid an amount of Rs. 1,50,000/=.

9. According to learned counsel, the petitioner has been illegally roped and implicated in the case by the investigating agency without any basis or

evidence, much less a legal, cogent and credible one but on the basis of the statement made by the co-accused Vinod Singh which statement has no

legal sanctity in law having been made during the course of investigation. Learned counsel for the petitioner thus, would pray for grant of bail to the

petitioner.

10. Per contra, counsel for the respondent would oppose the grant of bail to the petitioner on the premise that the petitioner has conspired in the

commission of heinous offence and is a part of drug mafia, as such, is not entitled to the concession of bail.

11. The settled position of law as evolved by a long line of decisions of the Apex court on the subject relating to grant of bail is that there is no straight

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

exercise its judicial discretion not only as per the settled law but, also according to the principle laid down by the Code of Criminal Procedure and

judicial precedence. A reference in this regard is made to the Apex court judgement passed in case titled as "Data Ram Singh v/s State of Uttar

Pradesh & Ors" reported in 2018 (3) SCC page 22, would be relevant and germane, wherein at Paras 1, 2, 4 and 5 following has been noticed: -

1. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until

found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific

offences but that is another matter and does not detract from the fundamental postulate in respect of other offences.

Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a

correction home (which ever expression one may wish to use) is an exception.

Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and

for longer periods. This does not do any good to our criminal jurisprudence or to our society.

2. There is no doubt that the grant or denial of bail is entirely the discretion of the Judge considering a case but even so, the exercise of judicial

discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally

there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused

person to police custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might

be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems

as noticed by this Court in inhuman Conditions in 1382 Prisons.

5. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nimesh Tara chand

Shah vs. Union of India going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia vs. State of

Punjab in which it is observed that it was held way back in Nagendra Nath Chakravarti, In that bail is not be withheld as a punishment. Reference

was also made to Emperor vs. H. L. Hutchinson wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for

bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.Ã¢â€â€

12. Keeping in mind the aforesaid position and advertent the facts of the case, indisputably the alleged contraband has not been recovered from the

petitioner herein, so much so the petitioner has been implicated as an accused upon the statement made by the co-accused Vinod Singh during the

course of investigation. The case setup by the prosecution against the petitioner herein is that the petitioner entered into a conspiracy with other

accused person for commission of the alleged offence and since no recovery of alleged contraband has been effected from the petitioner, as such,

there cannot be any presumption against the petitioner without the recovery of such alleged contraband and, as such, rigor of Section 37 NDPS Act, in

the matter of bail would not be applicable. In so far as the allegation of conspiracy is concerned, it does not appear from the record as to where and

when the conspiracy had been hatched and that there has been a prior meeting of minds. The implication of the petitioner on the basis of statement of

co-accused made during the course of investigation cannot be relied upon while dealing with the instant bail application. Furthermore the respondent

has nowhere contended in the objections that there is likelihood that the petitioner would commit offence while on bail. Having regard to the facts and

circumstances of the case, the petitioner at this stage has been able to carve out a case for grant of bail and seemingly it appears at this stage that

there are reasonable grounds for believing that the petitioner is not guilty of the offence committed and that he is not likely to commit an offence while

on bail. Accordingly, application is allowed and petitioner is granted bail subject to the following conditions: -

i) Furnishing of personal bond to the tune of Rs.50,000/- with two sureties of the like amount to the satisfaction of the trial court.

ii) Not to leave the territorial jurisdiction of this court without the permission of the trial court.

iii) Not to influence directly or indirectly the prosecution witnesses or tamper with the prosecution evidence by any manner, mode or method.

iv) To face and take the trial before the trial court without any fail.

13. Disposed of.