(2021) 12 J&K CK 0054

In the Jammu And Kashmir High Court

Case No : Bail Application No. 89 Of 2021

Ali Mohammad Wani & Anr — APPELLANT

Vs

UT Of J&K — RESPONDENT

Date of Decision : 28-12-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 109, 149, 420, 467, 498
Code Of Criminal Procedure, 1989 — Section 161
Code Of Criminal Procedure, 1973 — Section 439

Citation : (2021) 12 J&K CK 0054

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Shabir Ahmad Bhat, Sajad Ashraf

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) The petitioners have sought bail in anticipation of their arrest in FIR No.22/2021 for offences under Section 420, 467 and 109 IPC registered with the Police Station, Kralgund Kupwara.

2) The facts giving rise to the filing of the instant petition are that on 21.04.2021, one Ghulam Mohammad Mir lodged a written complaint before the Police alleging therein that a loan has been taken by some unknown persons under Account No.115020019259493 from HDFC Bank Branch Baramulla in his name. it was further alleged in the complaint that some unknown persons and officials of the HDFC Bank are involved in the crime.

3) During the course of investigation, statements of witnesses under Section 161 of J&K Cr. P. C were recorded and the relevant loan file from the HDFC Bank was seized. It was revealed that one Manzoor Ahmad Wani had impersonated himself as Ghulam Mohammad Mir, the complainant, and one Tariq Ahmad Mir stood as his guarantor. Tariq Ahmad Mir happens to be the son-in-law of the complainant.

It was also revealed during the course of investigation that the aforesaid Tariq Ahmad Mir had close contacts with petitioners who happen to be the officials of the Revenue Department. The said accused procured revenue extracts relating to the land of the complainant with the help of some agents, namely, Hameed Ahmad Bhat and Farooq Ahmad Ganai, whereafter forged documents in the name of complainant were prepared. Besides aforesaid persons, one more person Firdous Ahmad Sheikh and officials of the HDFC Bank, namely, Manzoor Ahmad Shoosha S/o Gh. Mohammad Shoosha R/o Sopore and Bilal Ahmad Lone S/o Ab. Ahad Lone r/o Rafiabad were also found involved in the commission of the crime. Seven accused persons have been arrested so far whereas petitioners are yet to be arrested. However, their finger prints have been taken which are being submitted before FSL, Srinagar, for obtaining expert opinion.

4) It has been contended by the petitioners that they have been falsely implicated in the case and that in their capacity as revenue officials, they are alleged to have only issued revenue extracts of the land belonging to the complainant. It is further contended that if at all any offence has been committed, the same has been committed by other accused nominated in the investigation report. Petitioners have also submitted that both of them have now retired and that they are suffering from various ailments. Therefore, in these times of pandemic, if they are sent to custody, their health is bound to deteriorate. It has also been contended that petitioners are ready to cooperate with the investigating agency and that their custodial interrogation in the case is not needed.

5) The application has been resisted by the respondents. It has been contended by the respondents that investigation of the case is still in progress and, as such, petitioners do not deserve to be enlarged on bail. It has been also contended that the application of the petitioners for grant of bail in anticipation of their arrest has already been rejected by Principal Sessions Judge, Kupwara, vide his order dated 15.07.2021

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

7) So far as the principles for grant of bail in anticipation of arrest are concerned, the same have been laid down by a Constitution Bench of the Supreme Court in the case of Gurbaksh Singh Sibbia and ors vs. State of Punjab, (1980) 2 Supreme Court Cases 565. The Court has while observing that the question, whether to grant bail or not, depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict held as under:

"In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in The State v. Captain Jagjit Singh, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

8) Relying upon the aforesaid judgment, the Supreme Court in the case of Siddharam Satlingappa Mhetre vs State Of Maharashtra And Ors, (2011) 1 Supreme Court Cases 694, has, while observing that no inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail, held that the following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

"(i). The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii). The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii). The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

(v). Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(vi). Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii). The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii). While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix). The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; and

(x). Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

9) The Supreme Court has clearly laid down that before considering a case for grant of bail in anticipation of arrest, the exact role of the petitioner has to be comprehended. It has been further provided that the cases in which accused is implicated for aiding or abetting the other accused or for the matters relating to common intention or common object, the Court has to consider the facts with even greater care and caution.

10) Coming to the fact of the instant case, the role stated to have been played by the petitioners in the commission of alleged crime is that they have colluded with one of the accused, who happens to be the son-in-law of the complainant, and provided to him the revenue extracts of the property belonging to the complainant.

11) Learned counsel for the petitioners has contended that the petitioners as officials of the Revenue Department, who were trustees of the public record, were duty bound to provide certified copies of revenue record to the applicant, particularly when the applicant happens to be none other than son-in-law of the owner of the land in question. Thus, according to learned counsel for the petitioners, it cannot be stated that petitioners have, in any manner, aided or abetted the commission of the crime.

12) The submission made by the learned counsel for the petitioners appears to have, prima facie, merit, inasmuch as there is no allegation in the status report against the petitioners that they were, in any manner, connected with the actual preparation of forged documents. The revenue extracts provided by them may have been used for preparing the forged documents but it is a matter of

investigation as to whether petitioners were in know of the larger conspiracy regarding preparation of forged documents.

13) Learned Sessions Judge, while rejecting bail application of the petitioners, has not taken aforesaid aspect of the matter into consideration and has laid much stress on the fact that custodial interrogation of the petitioners is needed for taking their specimen signatures and handwriting. I am afraid said observation of the learned Sessions Judge is not tenable because for the purposes of obtaining specimen signatures or handwriting of a person, it is not necessary that he should be subjected to custodial interrogation. In any case, as per the latest status report, finger prints of the petitioners have already been taken and the report of the FSL in this regard is awaited.

14) For the foregoing reasons, I find the present case fit one where petitioners should be enlarged on bail. Accordingly, the petition is allowed and it is directed that in the event petitioners are arrested in FIR No.22/2021 for offences under Section 420, 467 and 409 IPC of Police Station, Kralgund Kupwara, they shall be enlarged on bail subject to the following conditions:

(I) That they shall furnish bail bonds/personal bonds in the sum of Rs.50,000/ each with one surety of like amount to the satisfaction of Investigating Officer concerned;

(II) That they shall cooperate with the investigating agency, as and when required;

(III) That they shall not leave the territorial limits of Union Territory of Jammu and Kashmir;