

(2020) 09 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Bail Application No. 69 Of 2020, Criminal Miscellaneous No. 440 Of 2020

Almas Ara alias Rosy And Others

APPELLANT

Vs

Union Territory Of J&K

RESPONDENT

Date of Decision : 01-09-2020

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 34, 102(B), 302, 307, 324, 326, 506

Citation : (2020) 09 J&K CK 0007

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Z. A. Qurashi, Rehana Fayaz, B. A. Dar

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. Through the medium of the instant application, the applicants/ accused are seeking bail in connection with case bearing FIR No. 135/2012, registered against them by Police Station, Saddar, for the commission of offences punishable under Sections 302, 307, 34, 102-B, 326, 324 and 506 of the erstwhile Ranbir Penal Code (RPC), for which they are facing trial before the Court of learned Additional Sessions Judge, Srinagar.

2. Mr Z. A. Qurashi, the learned senior counsel, appearing on behalf of the applicants/ accused, submits that the applicants/ accused have been implicated in a false and frivolous case as none of them have participated in the commission of offences imputed to them. It is further submitted that the applicants/ accused, earlier in point of time, approached the Court of competent jurisdiction with an application for admitting them to bail, but the Court below rejected the same on the ground that some eye witnesses were yet to be recorded in the case. Mr Qurashi also submits that in view of the sharp spike in the number of COVID-19 Pandemic cases all over the country in general, and in different jails of the

country in particular, including the Central Jail, Srinagar; that is the place where the applicants/ accused are presently lodged, the life of the applicants/ accused is under threat, therefore, they deserve to be admitted to bail, moreso, in view of the directions passed by the Hon'ble Supreme Court. It is contended that in fact the applicant No.1, namely, Mst. Almas Ara alias 'Rosy', has, on her screening, already been declared as positive for the COVID-19 Pandemic.

3. Mr B. A. Dar, the learned Senior Additional Advocate General, representing the respondent-Union Territory of Jammu and Kashmir, submits that the applicants/ accused are facing trial in a case involving heinous offences and, thus, they do not deserve the concession of bail. Mr Dar further submitted that in case the applicants/ accused are, at this stage, admitted to bail, there is every likelihood that same will not only halt the investigation of the case, but will also hamper it badly; thereby resulting in consumption of very material and important evidence.

4. Heard the learned counsel for the parties, perused the pleadings on record and considered the matter.

5. On 14th of August, 2020, when this matter was taken up on motion hearing, this Court, while issuing notice to the respondent-Union Territory of Jammu and Kashmir, took on record the statement of Mr Qurashi that the applicant No.1 has tested positive for COVID-19 Pandemic. Thereafter, the matter was listed on 20th of August, 2020, on which date, Mr B. A. Dar, the learned Senior Additional Advocate General, appeared on behalf of the respondent-Union Territory of Jammu and Kashmir through Virtual mode. Besides, this Court, while adjourning the matter to 21st of August, 2020, having regard to the statement made by the learned senior counsel that the applicants/ accused have already moved an application before the Court of learned Additional Sessions Judge, Srinagar, for seeking the relief as prayed for before this Court but the said application was not decided despite passing of a considerable period of time, sought a report from the learned Additional Sessions Judge, Srinagar, as to what was the progress made in ensuring consideration/ disposal of the application filed by the applicants/ accused seeking their release on bail. In compliance of the aforesaid directions of this Court, the learned Additional Sessions Judge, Srinagar, in terms of his communication bearing No. 11/AdJS dated 20th of August, 2020, has forwarded the copy of order dated 30th of June, 2020, passed by it on the application moved by the applicant No.1 for seeking her release on bail, whereby the said application has been rejected.

6. Now, I proceed to deal with the present application filed by the applicants/ accused in view of the submissions made by the learned counsel for the parties and the law governing the subject.

7. It is settled principle of law that grant or refusal of bail has to be made having regard to the nature of the crime, the circumstances under which it was considered, the background of the accused, the possibility of his/ her jumping bail, the impact that his/ her release may make on the Prosecution witness(es),

its impact on the Society and possibilities of retribution. The analogy for entertaining a subsequent or second application for bail, when it was earlier rejected, the consideration would be the same. The change of the fact situation may differ from case to case. Hon'ble the Supreme Court in case titled 'State of Maharashtra v. Captain Buddhihikota Subharao: MANU/SC/054/1989', while dealing with a case for the grant of bail in almost the similar circumstances, observed that 'when we speak of change, we mean a substantial one, which has a direct impact on the earlier decision and not merely a cosmetic change which are of little or of no consequence.'

8. In the above context; on consideration of the facts of the case; and the law governing the subject of grant of bail, I am of the view that the successive or subsequent bail application on the same very facts/ grounds on which the earlier one was rejected by the Court of competent jurisdiction cannot be entertained, unless it is shown that there is a substantial change in the fact situation or in the law, which requires earlier view being interfered with or where the earlier finding has become obsolete. Change in fact situation would never mean any new or additional ground which was earlier available to the accused, but that was not taken on the earlier occasion. In the case on hand, there is no change of circumstance, whereas, it is a case whereupon consideration of the material on record and hearing the submissions of the counsel for parties, the Court of competent jurisdiction consciously rejected the prayer for grant of bail of the applicants/ accused on merits. There is nothing on record nor any argument has been advanced on behalf of the applicants/ accused to show that there has been any substantial change of circumstances after rejection of the earlier bail application, which would necessitate reconsideration of the prayer afresh, except for the one fact relating to the spread of COVID-19 Pandemic all over the country, including the present place of lodgment of the applicants/ accused, i.e., the Central Jail, Srinagar. This spread of COVID-19 cannot be deemed to be a substantial change in the 'fact situation', moreso, when the authorities in the Government of Union Territory of Jammu and Kashmir have already taken considerable measures for the protection of health and welfare of the prisoners/ inmates in order to restrict the transmission of COVID-19 in different jails of the Union Territory, including the Central Jail, Srinagar, that the place where the applicants/ accused are lodged at this point in time. Furthermore, the Hon'ble Supreme Court, in suo moto proceedings bearing No. 01/2020, titled 'Contagion of COVID-19 Virus in Prisons', has, by order dated 23rd of March, 2020, already directed each State/ Union Territory of the country to constitute a 'High Powered Committee' to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate; depending upon the nature of offence, the number of years to which he/ she has been sentenced or the severity of the offence with which he/ she is charged with and is facing trial or any other relevant factor which the Committee may consider appropriate.

9. Apart from the above, while considering a bail application, what is required to be seen is prima facie involvement of a particular accused connecting him/ her

with the commission of alleged offence and its gravity or seriousness. Chances of tampering with evidence can also be a very valid ground for rejecting or accepting bail application and, at the same time, the Court has also to ensure that there should not be any hindrance in free, fair and just investigation of a case and/or of a trial.

10. The principles generally governing grant of bail are relatable to the following:

- i. Seriousness of the allegations, severity of punishment, character of evidence on which the charge is proposed to be sustained, possibility of tampering and intimidating the witnesses, and chances of running away from the trial; and
- ii. false implication of the accused, allegations levelled not believable, and wreaking vengeance for political or business reasons.

Before granting any concession of bail, the above referred to principles are to be kept in mind while exercising discretionary jurisdiction. It is also to be noted that at the stage of considering an application for grant of bail, the Court has only to go into the limited question as to whether a prima facie case is established against the accused. It cannot go into evidentiary value, credibility and reliability of witnesses. However, while examining a bail plea of accused, the circumstances under which the crime is alleged to have been committed and the character/behavior of the accused person are also to be examined. In the present case, the applicants/ accused are facing trial in connection with heinous offences, as such, in my opinion, they, at this stage, do not deserve any concession of bail, *moreso*, when the earlier application filed by them has been rejected on merits by the Court of competent jurisdiction and there is no substantial change of circumstance or event. Further, repetition of prayer for bail after rejection by the competent Court after invoking the power of review of the decision of the earlier Court may lead to judicial anarchy about which caution has been sounded by the Apex Court of the country in umpteen judicial dictums.

11. In view of the above, I do not find any merit in this application filed by the applicants/ accused seeking bail and, as such, same shall stand dismissed accordingly, alongwith the connected CrIM(s). The applicants/ accused, however, shall be at liberty to approach the 'High Powered Committee', as constituted by the Government of Union Territory of Jammu and Kashmir in compliance of the directions passed by the Hon'ble Supreme Court in suo moto proceedings titled 'Contagion of COVID-19 Virus in Prisons' (*supra*), with an application for seeking their release on parole or interim bail, which application, if made, shall be considered and decided by the said Committee in accordance with the directions passed by the Supreme Court expeditiously.