

(2021) 03 J&K CK 0015
In the Jammu And Kashmir High Court
Case No : Bail Application No. 03 Of 2021

Angrez Singh And Others

APPELLANT

Vs

Union Territory Of J&K

RESPONDENT

Date of Decision : 01-03-2021

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 18, 18(c), 29, 37

Citation : (2021) 03 J&K CK 0015

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Sandeep Singh, Jamrodh Singh

Final Decision : Allowed

Judgement

1 As per the prosecution case, on 26.04.2020, the Police Station, Arnas received an information from reliable sources that an unknown person has cultivated poppy crop in his land measuring around 5/6 marlas at village Dharan, District Reasi. On the basis of the said information, FIR No. 28/2020 for offences under Sections 8/18/29 of NDPS Act was registered at Police Station, Arnas.

2 During investigation, the I/O along with Tehsildar visited the spot and found that the petitioners herein have cultivated the poppy crop on their land. 2.2 kg of poppy crop was found to have been cultivated by petitioner Angrez Singh, 2.6 kg by petitioner Kuldeep Singh, 2.9 kg by petitioner Narinder Singh and 2.7 kg by petitioner Jasbir Singh. The I/O prepared the samples on the spot and seizure memos were prepared in the presence of Executive Magistrate. The samples were sent to FSL Jammu for chemical analysis and the statements under Section 161 were also recorded by the I/O. The petitioners were arrested on 07.9.2020. After obtaining report from the FSL, Jammu which confirmed the existence of narcotic material, the investigation was completed and the challan presented in the Court of learned Sessions Judge, Reasi (hereinafter referred to as the 'trial Court'). On 15th of October, 2020, all the petitioners herein moved applications before the trial Court for grant of bail. The trial Court though, in principle, agreed

that the contraband recovered from the possession of the petitioners falls within the category of intermediate quantity, yet, having regard to the gravity of the offence, severity of punishment prescribed and the impact on the society etc., declined the bail. The applications moved by the petitioners were, thus, rejected by the trial Court vide its common order dated 08.12.2020.

3 Feeling dissatisfied and aggrieved by the order of the trial Court, fresh bail application came to be filed by the petitioners before this Court. The bail is claimed by the petitioners primarily on the ground that they are incarceration since 07.09.2020 and that the investigation has since been completed and the challan presented before the trial Court and, as such, the petitioners deserve to be enlarged on bail. It is submitted that the object of bail is to secure the attendance of the accused in the trial and unless there is material on record to indicate that the petitioner/accused, if enlarged on bail, will not appear to take their trial, it should not be normally refused. Learned counsel for the petitioners further argues that it is now well settled that the gravity of offence alone cannot be a decisive ground to deny bail and the Court, while considering the bail plea, must bear in mind that an accused is presumed to be innocent until proven guilty and that the bail is rule and jail an exception.

4 The bail plea of the petitioners is resisted by the respondents who, in their objections, have, while narrating the prosecution story, pleaded that the petitioners are involved in heinous offences which carry punishment up to 10 years and, therefore, cannot be enlarged on bail, in that, there is every apprehension that they, after coming out of the jail on bail, will tamper with the prosecution evidence by influencing the witnesses.

5 Having heard learned counsel for the parties and perused the record, it is necessary to first set out Section 18 of NDPS Act which reads as under:

18. Punishment for contravention in relation to opium poppy and opium.- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable;

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees; and

(c) in any other case, with rigorous imprisonment which may extend to ten years

and with fine which may extend to one lakh rupees".

6 From reading of Section 18 of NDPS Act, it is evident that cultivation of opium poppy is an offence and depending upon the quantity of the contraband recovered, following punishments have been provided.

(i) Where the contravention involves small quantity, the punishment prescribed is rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or both;

(ii) where the contravention involves commercial quantity, the punishment prescribed is rigorous imprisonment for a term which shall not be less than ten years, but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees. It further provides that the Court may, for the reasons to be recorded, impose a fine exceeding two lakh rupees as well; and

(iii) However, in any other case of contravention, the accused guilty of offence would be punished with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.

7 Learned counsel for the petitioners submits that the case of the applicants falls in the third category. He submits that in the case of cultivation of opium poppy, it is difficult to work out exactly as to whether the produce would fall within small quantity or in commercial quantity. Referring to Note 3 to the Notification specifying 'small quantity' and 'commercial quantity' of narcotic drugs and psychotropic substances, learned counsel argues that the case of the petitioners falls in Section 18 (c) of NDPS Act and, therefore, it should be treated akin to the case involving intermediate quantity.

8 The argument of learned counsel for the petitioners is not without any substance. In the challan, the respondents have shown the quantity of contraband cultivated by the each of the petitioners, but how such quantity has been worked out is not forthcoming. In these circumstances, it is difficult at this stage to reach at any conclusion with regard to the quantity of opium actually cultivated by each of the petitioners individually. I, therefore, take the case of the petitioners falling under Section 18 (c) of NDPS Act for the purpose of this bail application.

9 Viewed thus, when the investigation in the matter has since been completed and the challan presented in the competent Court of law and the petitioners have already suffered incarceration of more than six months, it would serve no purpose to keep them in the jail indefinitely. After all, the purpose of arrest of the accused in a case is not to punish him without trial, but is only to ensure fair investigation without giving any opportunity to the accused to tamper or influence the prosecution witnesses. We cannot ignore the golden principle of criminal jurisprudence that the accused is presumed to be an innocent until proven guilty and the guilt of the accused can only be established in a trial, to be

held by an impartial competent Court of law. Long incarceration of accused during trial which, in the prevalent criminal justice system, takes undue time to conclude, would be tantamount to imposing pre-trial punishment on the accused. The prosecution has not placed on record any material to indicate that the accused are the persons of such character that in case they are enlarged on bail, they will thwart the course of justice by tampering with the prosecution evidence by influencing the witnesses.

10 It is true that the gravity of the offence and the severity of punishment prescribed are the relevant considerations to be borne in mind while considering bail application, but there are other factors which are equally important and cannot be ignored. This is now widely accepted principle of our criminal jurisprudence that the grant of bail is a rule and jail an exception. When the case of the petitioners is examined in the light of aforesaid principles, this Court finds no reason or justification to deny the concession of bail to the petitioners at this stage, more so, when rigors of section 37 of NDPS Act are not attracted. The reasoning given by the learned trial Court while rejecting the bail application of the petitioners that the offences alleged to have been committed by them are serious in nature and have deleterious effect on the society, cannot be a sole ground for rejection of bail application, more particularly, when the allegations against the petitioners are yet to be established. The trial Court has not taken note of the fact that the petitioners are in jail for the last more than six months and that the purpose for which they were arrested has been accomplished with the presentation of the challan.

11 For the foregoing reasons, I am inclined to extend the concession of bail to all the petitioners. Accordingly, this application is allowed and the petitioners are admitted to bail subject to the following conditions:

- (i) That they shall furnish personal bonds in the amount of Rs.50,000/ each with one surety of the like amount to the satisfaction of the learned trial court;
- (ii) That they shall appear before the trial court on each and every dates of hearing;
- (iii) That they shall not leave the territorial limits of Union Territory of J&K without prior permission of the learned trial court;
- (iv) That they shall not tamper with the prosecution witnesses.

Copy of this order be sent to the learned trial Court.