

(2024) 02 J&K CK 0025
In the Jammu And Kashmir High Court
Case No : Bail Application No. 115 Of 2023

Ashiq Hussain Ganai

APPELLANT

Vs

UT Of J&K & Another

RESPONDENT

Date of Decision : 20-02-2024

Acts Referred:

Indian Penal Code, 1860 — Section 302, 384, 420, 468
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 148, 149, 307, 332, 336, 353, 420, 472, 473

Citation : (2024) 02 J&K CK 0025

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Syed Sajad Geelani, Jahangir Ahmad Dar, Vilayat Hussain

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1) The applicant is seeking bail in anticipation of arrest in FIR No.152/2023 under Sections 420 and 384 IPC registered with Police Station, Baramulla, after the similar request made by the applicant through the medium of an application for grant of bail in anticipation of arrest was turned down by the Learned Sessions Judge, Baramulla vide order dated 19.08.2023.

2) It is stated that a false and frivolous FIR has been registered against the applicant and other accused persons only to tarnish the image of the applicant, who is a Councillor in Municipal Council, Baramulla. It is further stated that vide order dated 25.07.2023, the applicant was initially granted interim bail by the Court of learned Principal Sessions Judge, Baramulla, but subsequently the bail application was dismissed. It is also stated that the learned Sessions Court rejected the bail application on the ground that six criminal cases were pending against the applicant whereas the fact remains that in FIR No.24/2011, the applicant was already acquitted and no chargesheet was filed in FIR No.155/2016. In FIR No.65/2022, challan has already been filed against the

applicant and in FIR No.283/2016, the applicant was never arrested.

3) The respondents have filed their response stating therein that the FIR mentioned above stands registered against the petitioner and during the course of investigation, statements of some witnesses were recorded and bank statements were also obtained from the J&K Bank. It is stated that the accused persons were found involved in commission of offences under Section 420 and 384 IPC and efforts were made to affect their arrest. On 27.07.2023, the accused persons submitted an order granting them interim bail in anticipation of arrest and they were released on furnishing personal bonds as per the bail conditions. It is further stated that the applicant is a habitual offender and is involved in five other FIRs i.e. FIR Nos. 24/2011 under Section 420 RPC, 319/2016 under Section 420, 472, 473 RPC, 63/2021 under Section 420, 468 IPC, 155/2016 under Section 307, 148, 149, 336, 332, 353 RPC and 65/2022 under Section 420 IPC. It is further averred that as per the conditions of bail in anticipation of arrest, the accused persons were directed to cooperate with investigating authorities but they violated the bail conditions and did not appear before the Investigating Officer. The order granting interim bail was not extended by the Court and subsequently accused No.2- Manzoor Ahmad Bhat, was arrested but subsequently bailed out by the Court of Judicial Magistrate, 1st Class, Baramulla, on health grounds but the applicant is continuously avoiding his presence before the investigation authorities and has used social media platform "Facebook" to address the media persons and indirectly suppress the main witness, which is a kind of intimidation to the complainant that he may use his political and bureaucratic influence to harass the main witnesses of the case.

4) Learned counsel for the applicant submitted that a false and frivolous FIR has been lodged by the complainant just to harass the applicant as no amount was ever received by the applicant. He has further submitted that the applicant is ready to abide by any condition that may be imposed by this Court in case bail is granted to him.

5) Per contra, Mr. Jahangir Dar, learned GA, submitted that the petitioner had duped the innocent complainant of his hard earned money. He further submitted that the petitioner does not deserve any concession of bail not only in view of his pass criminal antecedents but also in view of the clinching evidence against him in respect of receiving an amount of Rs.3.00 lacs as is evident from the account statements.

6) Heard and perused the record.

7) The perusal of the record reveals that the complainant had filed an application before Senior Superintendent of Police, Baramulla, against the applicant and others, alleging therein that his brother was lodged in Jail at Jagadari Haryana under Section 302 IPC in connection with killing of an Army Jawan. Three persons, the applicant Manzoor Ahmad Bhat and Ashiq Hussain Lone, claiming to have high political and bureaucratic influence, assured the complainant that they

could secure release of his brother and demanded an amount of Rs.5.50 lacs. Believing the assurance of the accused, the complainant made a payment of Rs.3.00 lacs to the applicant and Rs.1.00 lac to Umar Ganai and the remaining amount of Rs.1.50 lacs was handed over to the accused in cash but despite receiving the aforesaid payment, the accused persons failed to get his brother released from the custody and demanded an additional amount of Rs.1.00 lac which the complainant flatly refused. On his request to do the needful pursuant to the settlement, the accused persons threatened the complainant of dire consequences. The application was forwarded to concerned Police Station and FIR No.152/2023 for commission of offences under Section 420 and 384 IPC was registered against the applicant and other accused persons.

8) This Court has perused the Case Diary and perusal of the same reveals that vide order dated 25.07.2023 passed by the Court of Principal Sessions Judge, Baramulla, the petitioner along with other accused Manzoor Ahmad Bhat was granted bail in anticipation of arrest in respect of the offence(s) not carrying more than seven years sentence. After the response was filed, the bail application was rejected by the learned Sessions Judge after taking note of the antecedents of the petitioner.

9) The allegations against the applicant are very serious in nature and in light of the amount transferred in his account, as is evident from the bank statement, it is, prima facie, established that the applicant has received an amount of Rs.3.00 lacs from the complainant. The contention of learned counsel for the applicant that the applicant has not received any amount from the complainant gets belied in view of the record of the Bank procured by the Investigating Officer. The applicant has himself admitted that he is an accused in FIRs Nos.63/2021, 155/2016, 65/2022 and 283/2016. FIR bearing No.319/2016 was registered under Section 420, 427 and 473 RPC and FIR No.65/2022 was also registered for commission of offence under Section 420 IPC. There are very serious allegations against the petitioner in respect of receipt of money for procuring release of brother of the complainant. No doubt offence under section 420 IPC is punishable with maximum imprisonment of seven years but the antecedents of the applicant are also not clear enough for grant of bail in anticipation of arrest. Needless to say, that the antecedents of the accused and the conduct of the accused are also the relevant considerations for grant of bail in anticipation of arrest. (See Ramesh Kumar vs. The State of NCT of Delhi, 2023 LiveLaw (SC) 496-Para 22) The applicant only appeared once before the I/O and thereafter never appeared as urged by the respondents.

10) In view of above, this Court is of the considered view that the applicant does not deserve to be admitted to bail in anticipation of arrest. The present application is found to be misconceived and the same is, accordingly, dismissed.

11) The Case Diary be returned to learned counsel for the respondents.