
(2020) 11 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Bail Application No. 166 Of 2020, Criminal Miscellaneous No. 977, 978 Of 2020

Avtar Singh And Others

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 12-11-2020

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 15, 19, 24, 27(A), 37
Code Of Criminal Procedure, 1973 — Section 167(2), 497
Constitution Of India, 1950 — Article 21

Citation : (2020) 11 J&K CK 0023

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Irfan Khan, Jamrodh Singh

Final Decision : Disposed Of

Judgement

Javed Iqbal Wani, J

1. According to the prosecution version on 02.03.2020, upon routine checking at naka point Chanderkote, by police party of Police Station, Chanderkote, police intercepted a truck bearing registration No. PB13AR-9706 which was on its way from Srinagar to Jammu, was stopped and searched. During its search, 38 Kgs (two plastic bags containing 19 Kg each) Poppy Straw was recovered from the aforesaid truck. The driver namely Avtar Singh S/o Amar Singh and one more person namely Charanjit Singh S/o Mohinder Singh both residents of Kuhil, Tehsil & District Ludhiana, Punjab, were taken into custody.

2. According to the prosecution after performing legal formalities by the Investigation Officer, a case under Section 8/15 of the Act is said to have been registered and upon completion of investigation charge sheet is stated to have been filed on 24.06.2020 against the petitioners/ applicants before the Court of Principal Sessions Judge, Ramban.

3. The petitioners / applicants herein, in the instant application state to have earlier filed a bail application before the court of Principal Sessions Judge, Ramban being file No. 47/Bail on 09.06.2020 seeking grant of default bail on the premise that the petitioners /applicants are entitled to bail in view of the fact that the petitioners /applicants came to be arrested and sent into custody by Police on 02.03.2020 and that the respondents / non-applicants filed charge sheet after the stipulated period and are therefore, entitled to default bail under Section 167 (2) Cr. PC, as a matter of right.

4. According to the petitioners / applicants the said bail application however, came to be dismissed by the trial court on 24.06.2020 after the filing of the challan which had been filed on 24.06.2020, as such, there was no reason and occasion for the trial court to dismiss the bail application.

5. It is being further stated that the petitioners are under in incarceration since 02.03.2020 and that bail cannot be with held as a means of punishment also in view of the fact that there is a grave threat to the lives of the petitioners / applicants on account of outbreak of Covid-19 while being lodged in jail.

6. Learned counsel for the petitioners / applicants while reiterating the grounds urged in the application argued that the alleged substance recovered admittedly is of an intermediate quantity and that the rigor of section 37 of the Act does not apply to the case of the petitioners/ applicants.

7. Learned counsel would further submit that the petitioners / applicants are otherwise entitled to default bail, in that, the charge sheet came to be filed by the respondents / non-applicants after period stipulated under law.

8. Per contra respondents / non-applicants in the objections filed in opposition to the bail application have resisted and controverted the contentions raised and grounds urged by the petitioners / applicants on the ground that the substance admittedly is recovered from the truck of the petitioners / applicants and that the petitioners / applicants, as such, are involved in the commission of a heinous offence having huge impact on the lives of the young generation. The respondents thus seek dismissal of the application.

9. Heard, considered and perused the record.

10. Having regard to the provisions of Section 37 of the Act, same is applicable for commission of offences u/s 19, 24 and 27-A only when a commercial quantity of a drug or substance is recovered. Section 37 supra forbids release on bail of a person who is found in possession of commercial quantity of drug or substance unless the prosecution is given an opportunity to oppose the bail application and the court finds that the accused is not prima facie involved in the commission of offences. The aforesaid rider is in addition to the restrictions imposed by Section 497 Cr. PC.

11. Perusal of the order of the trial court as also the objections filed by the respondents / non-applicants reveal that admittedly an inter-mediate quantity of

the substance has been recovered from the truck of the petitioners / applicants, as such, the rigor of Section 37 supra admittedly is not applicable to the case of the petitioners/ applicants herein. Further the respondents in their objections nowhere contend that the petitioners are habitual offenders or else are having any criminal history.

12. The settled position of law as evolved by a long line of decisions of the Apex court on the subject relating to the grant of bail is that there is no straight jacket formally 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 utilize its judicial discretion not only as per the settled law but also according to the principles laid down by Cr. PC and judicial precedents. Reference in this regard is made to the Apex court Judgment in case titled as "Data Ram Singh v/s State of Uttar Pradesh & Ors" reported in 2018 SCC page 22, 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 (whichever 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 accuse 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 Nikesh Tarachand 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."

13. The object of bail is to seek attendance and appearance of the accused at the trial by a reasonable amount of bail. The petitioner/applicant have been in custody since 02.03.2020 and their prolonged incarceration admittedly expose them to a grave threat to their life on account of pandemic Covid-19 in the jail. Thus, having regard to the aforesaid facts and circumstances coupled with the legal position and preposition laid down by the Apex court in the Judgment supra, petitioner/applicant is held entitled to grant of bail.

14. In view of the proceeding analysis, the application is allowed and the petitioners /applicants are 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. To surrender and deposit Passport with the non-applicants within seven days from the date of passing of this order.

III. Not to leave the territorial jurisdiction of this Court without the permission of the trial court.

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

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

15. Disposed of along with all connected CrLM(s).