
(2020) 09 J&K CK 0023
In the Jammu And Kashmir High Court
Case No : Bail Application No. 128 Of 2020

Bharat Bhushan

APPELLANT

Vs

Union Territory Of J&K

RESPONDENT

Date of Decision : 11-09-2020

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120(B), 170, 171, 420, 467, 468, 471
Constitution Of India, 1950 — Article 21

Citation : (2020) 09 J&K CK 0023

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : Anil Khajuria, Raman Sharma

Final Decision : Disposed Off

Judgement

Javed Iqbal Wani, J

The instant bail application has been filed by the applicant for grant of bail in FIR No. 28/2019 (herein after for short the FIR) registered in Police Station Crime Branch, Jammu, for commission of offences under sections 420, 467, 468, 471, 170, 171, 120 B RPC, after his application for bail, filed earlier before the court of the Additional Sessions Judge, Jammu (herein after for short trial court) came to be dismissed on 02-06- 2020.

The background facts as stated by the applicant in the application under the cover of which the applicant seeks bail are that upon being falsely implicated in the aforesaid FIR, he was arrested in the month of June, 2019 where upon he preferred an application for grant of bail before the trial court, which remained pending before the trial court for consideration on account of outbreak of pandemic Covid-19 and subsequent lockdown, compelling him to prefer another application before the trial court in continuation to the earlier pending application seeking thereby consideration of the same through virtual mode. It is being stated in the application by the applicant that the said bail application came to be

dismissed by the trial court on 02-06-2020 without affording him an opportunity of hearing through virtual mode. It is being further stated that the trial court declined bail to the applicant without considering the material available before it and in the process passed perverse order. It is being further stated that while declining bail, the trial court passed the order supra committing grave illegality. It is being further stated by the applicant that a charge sheet arising out of the above FIR came to be filed before the trial court wherein it is alleged that the Crime Branch received a complaint, wherein it had been alleged that one Kulbir Singh (accused No. 1), a dismissed Army personnel lured youth of Jammu by impersonating himself as Army Colonel, collected huge amounts of money ranging from Rs. 2 to 5 lacs for recruiting the said youth in Indian Army and issued fake appointment orders to them cheated them, and committed fraud by inducing the said youth to part with huge amounts of money. It is being further stated in the application that upon registration of FIR supra and during the course of investigation two more accused persons viz. accused no. 2 and 3 came to be arrested, however, the applicant was not arrested or interrogated till June, 2019 and it was subsequently that the applicant was implicated in the FIR for having conspired with other accused persons in the commission of offences. It is being further stated in the application that only one witness is cited against the applicant in the charge sheet by the prosecution. The applicant further states in the application that he was implicated falsely in the aforesaid case and that even the applicant's son was issued an appointment order by the main accused. The applicant further states in the application that there exists no material against the applicant connecting him with the commission of alleged offences and that in fact the applicant rather was a victim himself. It is being further stated in the application that there is no witness cited by the prosecution in order to prove that the applicant was involved in the collection of money or luring of youth for providing them fake appointments. The applicant in the application has further stated while complaining against the trial court order supra that the trial court committed grave illegality in dismissing his bail application. The applicant further states in the application that the offences he is implicated in are not of grave nature punishable with either life or death and further states that he is in custody for last more than twelve months and his detention as such will not serve the interests of prosecution and that further on account of pandemic Covid-19, the applicant becomes entitled to bail under the guidelines framed by a High Power Committee constituted pursuant to the directions of the Apex Court. The applicant in the application further states that one co-accused namely Prem Paul whose earlier bail application had also been dismissed by the trial court, has been granted bail by this Court vide order dated 14- 07-2020 passed in bail application No. 85/2020, as such, applicant also deserves grant of bail.

Per contra non-applicants in the objections filed in opposition to the instant application have sought dismissal of the application on the premise that the applicant is involved in the Commission of serious, grave and reprehensible nature of offences having duped and lured the complainant and others after

inducing them to part with their hard earned money on the promise of providing jobs to them in the Indian Army. It is being further stated in the objections that the applicant intentionally, voluntarily and knowingly hatched a criminal conspiracy with other accused persons to cheat innocent un-employed youth of Jammu and Kathua and that after receiving a complaint from the complainant and upon holding an enquiry, FIR supra came to be registered against Kulbir Singh, Vishal Bhagat, Sahil Sharma, Ricky Chib and others and that after undertaking an investigation under the supervision of Dy.SP Crime Branch, accused persons namely Kulbir Singh, Sunil Singh Alias Ricky Chib and Vishal Bhagat came to be arrested on 24-05-2019 and after conducting searches of the said accused persons recoveries thereof were also made. It is further stated in the objections that during the course of investigation accused Kulbir Singh revealed that he was working in the Army and served there for a period of ten years and it is also being stated that he confessed to have prepared fake orders in the name of Indian Army obtaining amounts of money from the complainant and other youth against the said orders.

In the objections, the non-applicants while justifying implication of the applicant in the commission of aforesaid offences have stated that the applicant was operating from Kathua and collecting huge money from innocent youth promising them appointment in the Indian Army through accused Kulvinder Singh and that another accused namely Prem Paul during the course of investigation revealed that the applicant herein was working as an agent of accused Kulvinder Singh and that the applicant collected 56 lacs from different individuals of District Kathua. In the objections, it is being further stated by the non-applicants that the statement of witnesses recorded during the course of investigation revealed that the applicant has been working as a tout operating from Kathua, and collected an amount of Rs. 12 lacs from the innocent youth promising them a job in the Indian Army out of which an amount 8 lacs had been handed over by him to accused Kulvinder Singh retaining rest of amount. It is being further stated in the objections that a preliminary challan has been produced before the Court of Additional Sessions Judge, Jammu, where upon charges have been framed against the applicant and that the said Court after considering an earlier bail application filed by the applicant dismissed the same on 02-06-2020, in view of seriousness and gravity of the offences committed by the applicant. In the objections it has been further stated that the investigation of the case is in progress and that the remaining facts which include money trial, bank statement, FSL/CFSL reports are yet to be collected where upon after arresting other accused a supplementary charge sheet would be filed.

Heard considered and perused the record.

Upon perusal of the record, the pivotal allegation against the applicant alleged by the non-applicants is that the applicant conspired with other accused persons in the process of commission of the alleged offences. Since the trial is at its infancy stage in the case, it would not be appropriate for this court to dwell upon the

subject matter in detail at this stage, lest it may prejudice the case of either of the parties during the trial. However, prima facie what emerges from the prosecution case is that the applicant is one of the accused involved in the commission of offences in question as a conspirator. It is common knowledge that generally direct evidence may not be available to prove conspiracy, inasmuch as the act of conspiracy takes place secretly. Only the conspirators would be knowing about the conspiracy. However, it may not be proper for this court while considering the instant application to make any observation in this regard. It would for the trial court during the course of trial upon evaluating the material that may suggest conspiracy. While considering an application for bail it is well settled by catena of Judgments of the Apex Court that court must not go deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of prima facie case against the accused. Since charge sheet has been filed in the trial court, the presence of the applicant would be required only during trial which in view of present situations (due to outbreak of Covid-19) may consume long time, as such the applicant cannot be kept in custody for long time as a matter of punishment being already in custody for more than 12 months.

Furthermore, it is significant to mention here that the applicant in the instant application has laid the foundation of prayer for grant of bail on the bedrock of parity and in this regard has specifically stated in Para 14 of his application as follows:

"That the applicant most humbly submits that one other accused namely Prem Paul, charged in the same charge sheet has also preferred bail application before Learned Trial Court, which was dismissed by Learned Trial Court and this Hon'ble Court upon considering the bail application, preferred by other accused named above, was pleased to direct the release of accused Prem Paul by virtue of order dated 14-07-2020, passed in Bail Application No. 85/2020. The copy of order passed by this Hon'ble Court in bail application supra is enclosed herewith and marked as Annexure-VI for the kind perusal of this Hon'ble Court."

In response to the aforesaid averment of the applicant, the following is the response of the non-applicant stated in their objections:

"That in reply to contents of Para No. 10 to 16 needs no reply from the answering respondent as it is a matter of record and law."

This court is conscious of the legal position enunciated by the various Courts that parity cannot be the sole ground for granting bail yet it has also been laid down therein by the courts that if on examination of a given case it transpires that the case of applicant before the court is identically similar to the accused on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail.

Considering the aforesaid ground of parity pressed into service by the petitioner in the instant application and upon perusal of the objections of the non-

applicants coupled with the order passed by a co-ordinate Bench of this Court on 14-07-2020 while granting bail to co-accused namely Prem Paul, it can safely be said that the case of applicant is similar to that of the said co-accused and as such deserves enlargement on bail as well.

Regarding the matter of bail, it would be appropriate and advantageous here to refer to the Judgment of Apex Court reported in 2018 vol.3 SCC page 22 titled as Data Ram Singh vs. State of Uttar Pradesh and Ors wherein at Para 1, 2, 4 and 5 following is 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.

3.

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 accused 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 to 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."

Viewed thus in the aforesaid backdrop, the instant application is allowed, and the applicant/accused is held entitled to bail subject to following conditions:

1. Furnishing of personal bond to the tune of Rs. One lac with two sureties of the like amount to the satisfaction of the trial court.
2. To surrender and deposit Passport with the non-applicants within seven days from the date of passing of this order.
3. Not to leave the territorial jurisdiction of this Court without the permission of the trial court.
4. Not to influence directly or indirectly the prosecution witnesses or tamper with the prosecution evidence by any manner mode or method.
5. To face and take the trial before the trial court without any fail.

Disposed of.