
(2023) 03 J&K CK 0047

In the Jammu And Kashmir High Court

Case No : Bail Application No. 429 Of 2022

Gharu Ram And Another

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

Date of Decision : 27-03-2023

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 15, 29, 37

Citation : (2023) 03 J&K CK 0047

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Aman Bhagotra, Karan Sharma, Bhanu Jasrotia

Final Decision : Allowed/Disposed Of

Judgement

Rajnesh Oswal, J

The present petition has been filed by the petitioners for grant of bail in FIR bearing No. 144/2022 registered with Police Station, Vijaypur for commission of offences punishable under sections 8, 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985(for short the Act). Both the petitioners were arrested on 21.09.2022. It is further stated that the petitioners earlier approached the court of Principal Sessions Judge, Samba seeking bail on the ground that they had no knowledge as to which passenger was travelling in the Bus, wherefrom the recovery of the Poppy Straw weighing 48.50 Kg was recovered. The said bail application was dismissed by the learned trial court vide order dated 03.12.2022.

Response stands filed by the respondents, a copy whereof has been produced by Mr. Bhanu Jasrotia, learned GA appearing for the respondents. A perusal of the same reveals that on 21.09.2022 at around 0540 hours one Sleeper Bus bearing registration No. UP17AT 5594 coming from Jammu towards Kathua was asked to stop. The driver stopped the vehicle and during checking, two white coloured plastic sacks were recovered from the dickey of the said bus and on further

checking them, it was found that they both were containing Poppy Straw (Bhukki) like substance having weight of 25 kgs each.

After completion of the investigation, it was found that the total contraband recovered from the vehicle was 48.5 kgs of Poppy Straw and thereafter, charge sheet stands laid before the competent court.

Mr. Aman Bhagotra, learned counsel for the petitioners submits that though no recovery has been effected from the petitioners, but still even if the prosecution story is to be believed, the quantity of contraband i.e 48.5 kgs of Poppy Straw, which is the intermediate quantity, so rigors of section 37 of the Act are not applicable and further that the petitioners are in custody for the last more than six months and till date, the charge has not been framed.

On the contrary, Mr. Bhanu Jasrotia, learned GA appearing for the respondents vehemently argued that the allegation against the petitioners for commission of heinous offence, which in fact, is an offence against whole of the society, therefore, no leniency be shown to the petitioners.

Heard and perused the record.

A perusal of the order dated 03.12.2022 passed by the learned trial court reveals that the learned trial court has dismissed the bail application taking into consideration that the charges are yet to be framed against the petitioners.

Be that as it may, as the charge sheet has been filed against the petitioners and the presence of the petitioners is required during trial only. The respondents have also not brought on record any material so as to demonstrate that the petitioners have earlier been involved in commission of similar type of offences so this Court is of the considered opinion that the petitioners deserve to be enlarged on bail. In that view of the matter, this application is allowed. The applicants/petitioners are enlarged on bail subject to the following conditions:

(i) that they shall furnish two solvent sureties to the tune of Rs. 50,000/-each to the satisfaction of the trial court and personal bond of the like amount.

(ii) That they shall not contact with any of the prosecution witnesses during the trial and shall appear before the trial court regularly.

(iii) they shall not repeat the similar offence in the future.

In the event of violation of any of the conditions mentioned above, the respondents can lay a motion for cancellation of bail of the applicants/petitioners before the trial court.