

(2022) 08 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : Bail Application No. 9 Of 2021

Gull Mohammad & Ors

APPELLANT

Vs

Union Territory Of J&K & Ors

RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 2(xvii), 2(xviii), 8, 15, 18, 25

Citation : (2022) 08 J&K CK 0012

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : S. T. Hussain, Nida Nazir

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The petitioners have sought bail in anticipation of their arrest in FIR No.231/2021 for offences under Section 8/15, 25 of NDPS Act registered with Police Station, Anantnag.

2) As per the prosecution case, on 24.05.2021, Police Station, Anantnag, received a docket from ASI Gh. Mohd. to the effect that on 24.05.2021 Executive Magistrate, Anantnag, along with officials of Police Post, General Bus Stand, Anantnag, while performing patrolling and checking duties at Village Chee Anantnag, found that some farmers have grown poppy plants in their lands in order to earn huge amount of money from poppy straw which is used for making contraband drugs. These farmers include the petitioners herein. On receipt of this docket, FIR No.231/2021 for offences under Section 8/15, 25 of NDPS Act was registered and investigation was set into motion. During the course of investigation, statements of the witnesses were recorded and from the spot, one kg poppy straw (green) was seized and sealed. The same was sent to FSL, Srinagar, for examination.

3) The petitioners have sought bail in anticipation of their arrest on the ground that they are not involved in the alleged offences and that they have been falsely implicated on the basis of some enmity with the complainant. It has been contended that the crop of poppy straw has not been planted by the petitioners but the same has grown of its own. Lastly, it has been submitted by the petitioners that in case they are admitted to bail, they would cooperate with the investigating agency and would abide by all the conditions that may be imposed by this Court.

4) I have heard learned counsel for the parties and perused the material on record including the Case Diary.

5) Learned Senior counsel appearing for the petitioners has contended that cultivation of plants of Khashkhash, i.e. poppy plant, does not amount to any offence as the Khashkhash, which is the seed of the poppy plant, has been excluded from the definition of poppy straw as contained in Section 2(xvii) of the NDPS Act. The learned Senior counsel has further contended that unless there is a notification from the Central Government, the poppy plant, which is a species of Papaver, cannot be termed as Opium Poppy as defined in Section 2(xvii) of the NDPS Act.

6) In order to test the merits of the submissions made by the learned Senior counsel, it would be profitable to notice the provisions contained in sub-sections (xvii) and (xviii) of Section 2 of the NDPS Act. These read as under:

"xvii. "Opium poppy", means_

(a) the plant of the species *Papaver somniferum* L; and

(b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act.

xviii. Poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;

7) A perusal of the aforesaid provisions reveals that "Opium Poppy" means the plant of the of species *Papaver Somniferum*-L or any other species of *Papaver* from which Opium etc. can be extracted which has been notified by the Central Government in the official gazette. Thus, all plants of species *Papaver Somniferum*-L fall within the definition of Opium Poppy and even plants of those species of *Papaver* would fall within the said definition provided there is a gazette notification declaring so. So far as the "Poppy Straw" is concerned, all parts of "Opium Poppy" in different forms except the seeds fall within the definition of Poppy Straw. A combined reading of the aforesaid provisions reveal that the plants of species *Papaver Somniferum*-L or any other species of *Papaver*, which has been declared to be Opium Poppy in the official gazette, would fall within the

definition of Poppy Straw except its seeds. In other words, the term "Poppy Straw" would include all parts of Opium Poppy except seeds and "Opium Poppy" means plants of species *Papaver Somniferum-L*. Thus, except for the seed, all other parts of the plant of the species *Papaver Somniferum-L* would fall within the meaning of term "Poppy Straw".

8) In the above context, I am fortified by the judgment of the Supreme Court in the case of *Ajaib Singh v. State of Punjab*, (2000) 4 SCC 510. Para 14 of the judgment is relevant to the context and the same is reproduced as under:

14. We are unable to accept the arguments of Mr Sharma and Mr Rao. Under Section 15 the offence is in respect of "poppy straw". Even though the term "poppy husk" has not been defined in the NDPS Act, the term "poppy straw" has been defined. The term "poppy straw" includes all parts (except the seeds) of the "opium poppy". "Opium poppy" means the plant of the species *Papaver*. Thus except for the seed all other parts of the plant of the species *Papaver* would fall in the term "poppy straw". To be noted that parts of the plant *Papaver* would fall within the term "poppy straw" even though no juice has been extracted therefrom. For an offence under Section 15 it is not at all necessary that "poppy straw" should have been used or made into "opium". For cultivation, producing, manufacturing, possessing, selling, purchasing, transporting, importing or exporting inter-State or using opium there is a separate offence provided for under Section 18. If the alleged offence is under Section 18, then the question may arise whether the preparation contained more than 0.2 per cent of morphine. For an offence under Section 15, question of considering whether the preparation contains more than 0.2 per cent of morphine does not arise. As seen above even though no juice may have been extracted, so long as it is *Papaver*, it would still be "poppy straw" if it is a part of the plant *Papaver*.

9) In the face of aforesaid legal position, let us now analyze the facts of the instant case. The petitioners are alleged to have grown/cultivated Poppy plants in their respective lands. Not only the seeds of the Poppy plant that were found on the land of the petitioners but it is a case where whole plant was found to have been grown on the land of the petitioners. As already noted, all parts, excepting the seeds, of the poppy plant, which is species of *Papaver* would fall within the definition of "Poppy Straw".

10) Section 8 of the NDPS Act prohibits cultivation of Opium Poppy and Section 15 of the said Act provides for punishment for contravention in relation to cultivation of Poppy Straw. It provides that anybody producing the Poppy Straw in contravention of the provisions of the said Act or in contravention of the conditions of the license granted under the said Act is punishable depending upon the quantity of the Poppy Straw. In the instant case, the petitioners do not claim that they have cultivated the Poppy Straw under any permission or license from the competent authority. Their only contention is that the plants of Poppy Straw have grown on their lands of their own. This question is a subject matter of investigation but the material collected by the investigating agency does prima

facie suggest that the petitioners have grown plants of Poppy Straw on their respective lands. Therefore, there is prima facie material on record to connect the petitioners with the alleged crime.

11) That takes us to the conduct of the petitioners. A perusal of the Case Diary reveals that the investigating agency has been unable to apprehend the petitioners even though the FIR in the instant case has been registered more than one year back. According to the respondents, the petitioners are avoiding their arrest and they are not cooperating with the investigating agency. It is a settled law that the Court would not come to the rescue of a person and grant him bail in anticipation of his arrest if the said person is dodging the investigating agency.

12) Having regard to the fact that there is enough material on record to connect the petitioners with the alleged crime coupled with the fact that the petitioners are involved in a very heinous crime and they are not cooperating with the investigating agency, they do not deserve the concession of anticipatory bail from this Court. The petition is, accordingly, dismissed.

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