
(2020) 10 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : Bail Application No. 104 Of 2020

Gurmeet Singh

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 06-10-2020

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 21, 22, 37
Code Of Criminal Procedure, 1973 — Section 173

Citation : (2020) 10 J&K CK 0012

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Prince Khanna, Aseem Sawhney

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. The present application has been filed by the applicant for grant of bail after his bail was rejected by the learned Additional Sessions Judge, Jammu vide order dated 16.05.2020. It is stated in the application that the applicant was arrested in November, 2019 in FIR bearing No. 132/2019 registered with Police Station, Gangyal, Jammu for commission of offences under sections 8, 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the NDPS Act). It is further stated that the prosecution story is that on 11.11.2019 the applicant was found in suspicious circumstances near Bhargava Resort and on seeing the police, he tried to run away but he was apprehended by the Police along with a bag which he was carrying and on conducting the search of the bag, 100 grams of heroin was recovered from the possession of the applicant. After the completion of the investigation, final report in terms of section 173 Cr. P. C. was presented before the court of Learned Sessions Judge, Jammu, that was subsequently transferred to the court of Learned Additional Sessions Judge, Jammu. It is further stated that vide order dated 27.12.2019, the trial court framed the charges against the applicant and the prosecution was directed to

lead evidence. Only one witness, namely, Shah Jahan has been examined by the prosecution on 17.01.2020. Thereafter the case was fixed for 04.02.2020, 25.02.2020 and 20.03.2020 but no witness was examined by the prosecution and thereafter due to COVID-19 pandemic, no evidence has been recorded by the trial court. Faced with such a situation, the applicant filed an application before the trial court for grant of bail on the ground that the quantity of the contraband recovered from the applicant falls within the category of intermediate quantity and rigors of section 37 of the NDPS Act are not applicable but the said application could not be decided by the trial court and during the lockdown, the wife of the applicant on behalf of the husband had again moved an application before the trial court through her counsel through virtual mode and the trial court vide order dated 16.05.2020 dismissed the said application. Hence the present bail application.

2. The respondents were put to notice and they have filed detailed objections. The respondents have mainly objected the bail application on the ground that the offence so committed is very heinous and is against the society and the menace of drug abuse, drug addiction and drug trafficking has touched the alarming situation in the society so the applicant does not deserve to be enlarged on bail.

3. Mr. Prince Khanna, learned counsel for the applicant has vehemently argued that the applicant has been in custody for the last more than 10 months and only one witness has been examined by the prosecution till date and due to COVID-19 pandemic trial has come to stand still and also that there is no likelihood of resumption of the normal working of the courts in near future.

4. On the contrary, Mr. Aseem Sawhney, learned AAG has vehemently argued that the applicant is drug peddler and he is great threat to the society so he is not entitled to any bail.

5. Heard and considered the rival submissions.

6. This is an admitted fact that the quantity of heroin recovered from the possession of the applicant is 100 grams of heroin that falls within the category of intermediate quantity, as such rigors of section 37 of the NDPS Act shall not apply. The applicant is in custody for the last more than 10 months and only one witness has been examined till date. More so, due to COVID-10 pandemic, the trial has come to stand still due to restricted functioning of Courts and also there is no likelihood of resumption of normal working of the courts in near future. The respondents have not placed anything on record that the applicant is a habitual offender and is involved in similar type of offences. The allegations against the applicant are subject to proof during the trial. Taking into consideration that the quantity of the contraband that falls within the category of intermediate quantity and also that there is no likelihood of completion of trial in near future, this Court is of the considered opinion that the applicant deserves to be enlarged on bail.

7. For all what has been discussed above, this application is allowed.

The applicant is enlarged on bail on the following conditions:

(i) subject to furnishing of bail bond by the two sureties to the tune of Rs. 10,000/- each to the satisfaction of the trial court.

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

8. In the event of violation of any of the conditions mentioned above, the respondents shall be at liberty to lay a motion for cancellation of bail of the applicant before the trial court.

9. Disposed of accordingly.