
(2020) 12 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : Bail Application No. 60 Of 2020, Criminal Miscellaneous No. 792 Of 2020

Khurshid Ahmad Wani

APPELLANT

Vs

Union Territory Of J&K

RESPONDENT

Date of Decision : 24-12-2020

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 22, 29, 37

Citation : (2020) 12 J&K CK 0039

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Peer Aijaz Rasool Shah, Sheikh Feroz

Final Decision : Dismissed

Judgement

1. Through the medium of instant application, the petitioner is seeking bail in FIR bearing No. 3/2020 for commission of offences under section 8, 22

and 29 of the Narcotics Drugs Psychotropic Substances Act, 1985 (for short the Act) registered with the Police Station, Sumbal on the ground that the

petitioner was arrested in the month of January, 2020 and the challan stands also filed against the petitioner. The charges against the petitioner too

have been framed. It is further submitted by the petitioner that 41 bottles of welcyrex of 100 ml. each were recovered from the vehicle of the

accused, Showkat Ahmad Parray, who was driving the vehicle and the petitioner too was arrested along with him, whereas the fact remains that no

recovery has been made from the petitioner. It is further submitted by the petitioner that while going from his workplace to J&K Bank Branch,

Sumbal, he had requested the driver of the vehicle to drop him at the main market as he had put his own vehicle for servicing/washing in the garage in

the main market, Sumbal and when the vehicle was about to reach the main market, the vehicle in question was stopped for checking and during search by the naka party, the above mentioned contraband was recovered from the said vehicle and no recovery was effected from the petitioner. It is further stated by the petitioner that the Investigating Officer has not associated any independent witness with the investigation that renders the prosecution case doubtful and concocted one. It is further submitted that the quantity of the recovered contraband recovered does not fall within the ambit of commercial quantity, as such, rigors of section 37 of the Act shall not apply. It is also stated that samples were not extracted in accordance with law and also no batch numbers as well as date of manufacturing has been mentioned in the seizure memo. The petitioner has also raised the dispute with regard to the samples those were sent to the Forensic Science Laboratory(FSL) for examination. The petitioner has also sought the bail on the ground of parity as in the instant FIR, the other accused, namely, Sayar Ahmed Sheikh and Ishfaq Ahmad Wani were granted bail by the Coordinate Bench of the Court. It is also stated that the petitioner has developed health problem and continuous detention would further deteriorate his health condition.

2. The respondent has filed the objections, in which it has been categorically stated that the quantity of the contraband recovered from the Showkat

Ahmay Parray and the petitioner is 41 bottles of Welcyrex of 100 ml. each and further that the FSL report establishes that the recovered contraband contains Codeine Phosphate. It is further stated that the offence committed is against the society and, as such, the petitioner is not entitled to bail.

3. Mr. Peer Aijaz Rasool Shah, learned counsel for the petitioner besides reiterating the grounds those have been averred in the bail application, has seriously disputed the process of extraction of samples for sending it to the FSL and has also sought bail on the ground of parity.

4. On the contrary, Mr. Sheikh Feroz, learned Dy. A.G. has reiterated the stand which he has taken in his objections.

5. Heard and perused the record.

6. The prosecution case is that on 04.01.2020, when the SHO along with escort party was checking the vehicles near Irrigation Colony, Sumbal, at

around 8:30 hours one Duster Car bearing registration No. DL8CZ 9744 and

another Wagon R Car bearing registration No. JK02CC 9800 came from Sumbal and were stopped for checking. On questioning the driver of the Duster vehicle, he disclosed his name as Sayar Ahmed Sheikh and another person accompanied him disclosed his name Ishfaq Ahmad Wani and during checking of the vehicle of Duster Car, 7 bottles of svizcodine were found in the vehicle. The driver of the Wagon R car disclosed his name as Showkat Ahmad Parray and he was accompanied by the petitioner. On checking the Wagon R Car, 41 bottles of Welcyrex of 100 ml each were found in the vehicle. Pursuant to the recovery, FIR bearing No. 03/2020 (supra) was registered and the matter was investigated. The contraband recovered from both the vehicles were sent to the FSL and as per the FSL report, Codeine Phosphate was found in the recovered contraband i.e. bottle of Welcyrex. After the conclusion of the investigation, challan for commission of offences under sections 8, 22 and 29 of the Act was filed against the petitioner as well as other accused persons.

7. The petitioner was granted interim bail till 25.07.2020 and thereafter the petitioner filed the present bail application.

8. Each bottle of Welcyrex of 100 ml contains the Codeine Phosphate. Thus, the total 41 bottles would make the total recovery as 4,100 ml

(approximately 4.1kg) of Codeine Phosphate, which is beyond 1 Kg, which is commercial quantity prescribed under the notification. Thus, the

recovered contraband falls within the category of commercial quantity and rigors of section 37 of the Act shall apply in the instant case. This Court at

this stage cannot form an opinion that there are no reasonable grounds that the petitioner is not guilty of offence.

9. The other ground raised by the petitioner that sampling was not done in accordance with law and no independent witness was associated with the

investigation and no batch number and date of manufacturing was mentioned in the seizure memo, is a matter of trial and cannot be considered for the

purpose of grant of bail at this stage when the evidence is yet to be led. The contention of the petitioner that nothing was recovered from the petitioner

and there is nothing on record to demonstrate that the petitioner was in conscious possession of the recovered contraband, also cannot be considered

at this stage, particularly when the charges for commission of offences under section 8,22 and 29 of the Act have been framed against him. Reliance

is placed upon the decision of Apex Court in case titled "Superintendent, Narcotics Control Bureau versus R. Paulsamy" reported in 2000AIR

3661(SC), the relevant paragraph 6 is reproduced as under:

6. In the light of Section 37 of the Act no accused can be released on bail when the application is opposed by the Public Prosecutor unless the court

is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on

bail. It is unfortunate that matters which could be established only in offence regarding compliance with Sections 52 and 57 have been pre-judged by

the learned Single Judge at the stage of consideration for bail. The minimum which learned Single Judge should have taken into account was the

factual presumption in law position that official acts have been regularly performed. Such presumption can be rebutted only during evidence and not

merely saying that no document has been produced before the learned Single Judge during bail stage regarding the compliance with the formalities

mentioned in those two sections.

10. The last contention of the petitioner that the accused, namely, Sayar Ahmed Sheikh and Ishfaq Ahmad Wani were granted bail by the Coordinate

Bench of the Court and the petitioner too is entitled to bail on the ground of parity, is not tenable because in that case contraband recovered from the

possession of both the accused were 7 bottles of Svizcodin of 100 ml each and in that case the bail was granted by the Court only because the

quantity was less than the commercial quantity and rigors of section 37 of the Act were not applicable. The judgments relied upon by the learned

counsel for the petitioner, are not applicable in the facts and circumstances of the present case.

11. In view of all what has been discussed above, this bail application is without merit and is, accordingly, dismissed. The Superintendent of Jail

concerned shall provide appropriate medical treatment to the petitioner.