
(1997) 12 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : B.A. No. 93 Of 1997

M.K. Jalali and Another

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 26-12-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 181, 182
Jammu and Kashmir Prevention of Corruption (Amendment) Act, 2006 — Section 409, 5(2)

Citation : (1998) CriLJ 2656

Hon'ble Judges : G.D. Sharma, J

Bench : Single Bench

Advocate : R.P. Bakshi, M.K. Jalali, A.K. Sawhney and Bindraban Sawhney, for the Appellant; M.A. Goni, Sr. AAG, for the Respondent

Final Decision : Allowed

Judgement

G.D. Sharma, J.—The petitioner M.K. Jalali is a Superintending Engineer, in the Irrigation & Flood Control Department. The petitioner

Bindraban Sawhney is an Inspector in Motor Vehicles Deptt. Cases u/s 5(2)(e) of the Prevention of Corruption Act 2006 have been registered

against them under FIR No. 103/97 and 61/97 respectively. They are stated to have been taken into custody on 22-12-1997.

2. Through the medium of these petitions they have sought their release on bail by pleading that they have been co-operating with the investigating

agency right from the date of the alleged raids and the investigating agency has not yet concluded that the property recovered from their possession

is disproportionate to their known source of income. That they are respectable citizens and there is no likelihood of jumping the bail or misusing the

concession of bail in any manner. The petitioner Bindraban Sawhney in addition

has alleged that he is a diabetic patient and is entitled to bail

because of ill-health. He has placed on record the medical prescriptions showing his sickness.

3. These petitions have been opposed by the prosecution by filing the objections wherein it is pleaded that the Vigilance Organisation had

preliminary clues for their possessing assets disproportionate to their known sources of income and on this basis secret enquiries were initiated.

The raids were conducted in the premises occupied by them. Documents and articles have been seized and investigating agency requires some

time for questioning the petitioners accused and interrogating them in order to know about their disproportionate assets possessed by them either

on their own names or in 'benami' nature. These are economic offences against the society in general and the State in particular and deserve no

leniency from the Court. The grant of bail will adversely effect the investigation. From the investigation it has to be ascertained whether the offence

u/s 409, RPC is made out or not.

4. Regarding petitioner Bindraban Sawhney, it is stated that he is being provided medical aid and that the pass-books and cheque books

recovered from his possession require verification.

5. Heard the arguments.

6. The learned Counsel appearing for the petitioners have contended that it is not the mere acquisition of property that constitutes an offence u/s

5(2)(e) of the Prevention of Corruption Act 2006, but it is the failure to satisfactorily account for such possession that makes the possession

objectionable as offending the law. An accused person has a statutory right to account for during the investigation as well as during the trial and can

be held guilty in case it is not satisfactorily accounted for. In support of these contentions learned Counsel have cited the case of M. Krishna

Reddy Vs. State Deputy Superintendent of Police, Hyderabad, and State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others, . It is

further pleaded by them that offence is not punishable with death sentence or imprisonment for life but the maximum penalty on conviction provided

under law is seven years as well as fine and in this view of the matter, there is no legal embargo for the grant of bail. Rather the petitioners while

remaining on bail will be in a better position to account for their alleged

disproportionate assets before the Investigating agency as according to the showing of the investigating agency itself the investigation is at its initial stage. The petitioners are not habitual offenders but Government servants about whom there can be no possibility of jumping over the bail.

7. These arguments have been controverted by the learned Sr. AAG by pleading that the alleged offences against the petitioners are against the society in general because these are economic offences perpetuated against the State exchequer and the assets which have been found to be disproportionate could not be satisfactorily explained by them. Referring to the case of M.K. Jalali (B.A. No. 93/97), the learned Sr. AAG has contended that he was asked to co-operate with the investigation on 19th, 20th and 21st of Dec. 1997 but he was not sincerely co-operating and giving evasive replies which compelled the investigating agency to take him into custody on 22nd of Dec. 1997. That on search being conducted in the premises occupied by him an amount of Rs. 19,86,150/- was recovered in cash from his possession. That different pass books enumerated in the seizure-memos (list whereof is given at page 12 with the objections) show that the amounts are debited in the names of various persons and lying in different Banks. These pass books were found from the custody of the accused and still he has to account for. These seizure-memos also contained some FDRs and further investigation is also required to be done as to the amount covered by them. Item No. 29 in the said seizure-memos pertained to the registration of a house situated in Trikuta Nagar and further enquiries are required to be made. Besides that, he has some immovable properties in the cities of Delhi and Srinagar and he has to be further investigated. The accused is a man of status having heavy purse with him who can tamper with the prosecution evidence as the persons whose pass-books have been seized from his possession are under the spell of influence and this Court in the case of Mazahar Ali and Others Vs. The State, has laid down eight grounds which in his case weigh in favour of the prosecution and in that view of the matter the accused should be denied bail. Again in the case of Kunj Lal v. State 1984 KLJ 133 High Court declined the anticipatory bail on the plea that no fit case had been made out by the accused for that purpose. It has been further contended that these offences are against the society and required to be

reviewed in the light of the law laid down in the case of N. Sasikala Vs.

Enforcement Officer, Enforcement Directorate, Madras, where basing upon the ratio of case reported as State of Gujarat Vs. Mohanlal Jitmalji

Porwal and Another, , the bail was rejected. The ratio was that ""the Community or the State is not a persona non-grata whose cause may be

treated with disdain. The entire Community is aggrieved if the economic offenders who run the economy of the State are not brought to book.

8. Regarding application of Bindraban (B.A. No. 95/97) it has been admitted by the learned Sr. AAG that huge amount has not been recovered

from his possession in the form of cash but nine pass-books and different banks deposits have been recovered from his possession. They are being

looked into. These accounts are in the names of his kiths and kins and his retention of the account is required to be properly investigated. The

withdrawals and deposits in the Banks also require verifications. Some deposits, are made in the Post Office which also require verification.

9. Considering the respective contentions of the learned Counsel for the parties it can be said that further detention of the petitioner-accused in the

police custody is not required, who have been already with the investigating agency for the purpose of investigation since as the seized memos

were effected on that date. Their further presence in the investigation has been admitted by the prosecution for 19th, 20th and 21st of Dec. 1997.

The apprehension of the prosecution is that they will tamper with the prosecution evidence because the witnesses of the pass books are either their

relations or under their influence and control. This argument has an element of future contingency which may happen or not. In case an accused

person tampers with the prosecution evidence and the trial Court is satisfied on this aspect, the concession of bail can be withdrawn at any time.

This argument is not relevant at this stage.

10. In the case of Ishwar Piraji Kalpatri (supra) the law laid down by the Apex Court in K. Veeraswami Vs. Union of India (UOI) and Others,

has been reiterated where it has been held that there is no provision in law or otherwise which makes it obligatory of an opportunity of being heard

to be given to a person against whom the report is to be lodged. Rather, the law laid down is that the delinquent officer u/s 5(2)(e) of the Act has

the right to satisfactorily explain about his assets and resources before the Court

when the trial commences and not at an earlier stage. The burden of proof placed on the accused is an evidential burden though not a persuasive burden. The Courts take into consideration the following questions

for granting or refusing the bail which have been reiterated by this court in Mazhar Ali's case (supra) and the grounds are -

- (a) the nature of the charge;
- (b) the nature of the accusation;
- (c) the nature of evidence in support of the accusation;
- (d) the severity of the punishment to which the accused may be subjected;
- (e) the danger of the accused abusing the concession of bail by way of absconding or tampering with the evidence.;
- (f) health, age and sex of the accused;
- (g) the social position or status of the accused and complainant party; and last but not the least
- (h) whether the grant of bail would thwart the course of justice.

11. The nature of the charge against the petitioners-accused is of having assets disproportionate to their known incomes and they have a statutory

right to render explanation before the trial Court. The offence accused of is punishable with a maximum punishment for seven years with fine and

minimum punishment of one year and with fine. The danger that the petitioners-accused will flee away in case enlarged on bail cannot viewed with

seriousness as they have deep root in the society and social status.

12. Similar is the position to say that an admission to bail they would thwart the course of justice. In view of these facts and the circumstances no

discussion is required on the subject as grant of bail is a rule and rejection an exception. Taking stock in all these facts and the circumstances the

petitioners require to be admitted to bail.

13. Regarding the plea taken with regard to the registration of FIR against the petitioner M.K. Jalali in Kashmir it can be said that this offence can

also be tried in Jammu. This controversy if raised will be solved by the trial Court after looking into the provisions of Sections 181 182, Cr.P.C.

and other relevant provisions and it cannot be said that this Court has no jurisdiction to entertain the petition.

14. In view of what has been stated above, the petitions are, therefore, accepted

and the petitioners-accused are admitted to bail on their
furnishing bail bonds and personal bonds in the sums of Rs. 50,000/- each of the
satisfaction of the Registrar (Judl.) with two sureties. The
petitioners-accused shall co-perate with the investigation of the case as and
when required, they will not tamper with the prosecution evidence in
any manner and not leave the territory of the State of J. & K. without the prior
permission of the trial Court.