

(2007) 04 J&K CK 0008
In the Jammu And Kashmir High Court

Mohd Razak and Another	Vs	APPELLANT
State of Jammu & Kashmir and Another		RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 497
Jammu and Kashmir Prevention of Corruption (Amendment) Act, 2006 — Section 5(2)
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (2007) 2 JKJ 246

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, J.—Arrested on 9th of April, 2007 on being found to have accepted an amount of Rs. 1000/- as illegal gratification from

complainant, Rattan Lal Koul, who had lodged a written complaint with Police Station Vigilance Organization, Jammu that Mohd Razak, Patwari

was demanding an amount of Rs. 1000/- as illegal gratification for entering Mutation of complainant's wife, Daizy Koul regarding 9 1/2 marlas of

land which she had purchased vide a duly executed and registered Sale deed, Mohd Razak, Patwari and Kaki Ram, his peon have filed these two

applications for their release on bail in FIR. No. 09/2007.

2. Shri Bhupinder Singh Salathia, Learned Additional Advocate General submits that the petitioners were involved in a case of corruption

punishable u/s 5(2) of the Prevention of Corruption Act 2006, they, as such may not be admitted to bail because their detention during trial would

help curbing the menace of corruption in the society which according to Mr. Salathia had reached an alarming level. Learned Counsel additionally

submits that the petitioners would tamper with the evidence which had been collected and which may be collected during further investigation of the case to find out as to who else in the Revenue Department of the State to which the petitioners belonged were involved in encouraging corruption in the Revenue Department.

3. Shri K. S. Johal, on the other hand, submits that the petitioners carry a presumption of innocence. Punishment prescribed u/s 5(2) of the Prevention of Corruption Act is neither death nor imprisonment for life which may create an absolute impediment in considering their release on bail when they had already spent sufficient time in custody with the Vigilance Organization facilitating their custodial interrogation, which even otherwise was not warranted after the alleged seizure of trap amount from one of the petitioners. 4. I have considered the submissions of learned Counsel appearing for the parties.

5. True it is, that corruption is rampant in the society and its tentacles are spreading with alarming speed affecting proper governance and credibility of the society itself- But, what is the remedy? - And should the Court, adopt a different approach in considering the release of persons accused under the corruption cases than the one which is adopted in case of other offences.

6. The Law makers, finding it difficult to tackle various ills in the society by ordinary Laws of the Land, had been enacting special Laws with stringent provisions for punishments, and bail during investigation and trial of special offences enacted to deal with those ills which they considered could not have been satisfactorily dealt with under the ordinary Laws of the Land. The Narcotic Drugs and Psychotropic Substances Act, 1985 is one of such enactments.

7. The Law makers, in their wisdom, have not yet probably considered it fit and expedient, to bestow their thought as to whether or not stringent provisions for punishment, And governing bail during investigation and trial to deal with the corruption amongst public servants under the Prevention of Corruption Act and other such like enactments, were required to be enacted to deal sternly with the vice of corruption.

8. So long as there were no such Special provisions in force providing severe punishment and stringent provisions regarding bail during

investigation and trial of cases under the Prevention of Corruption Act and such like other Laws, persons accused of offences under the Prevention

of Corruption Act, 2006, cannot, in my opinion, be treated differently to deny them consideration for bail during investigation and trial merely

because they were alleged to be involved for infraction of offences under the Prevention of Corruption Act, 2006.

9. While considering release of persons accused of offences under the Prevention of Corruption Act, general principles governing grant or refusal

of bail and provision of Section 497 of the Code of Criminal Procedure are undoubtedly required to be kept in view, and bail in such non-bailable

offences may not be claimed, as of right, and in the absence of any special circumstances warranting refusal of bail, the well recognized principle

that bail is the rule and refusal an exception would always be a guiding factor for the Courts while considering the grant or refusal of bail in such

cases.

10. I, therefore, do not see any substance in Mr. Salathias's submission that the petitioners were required to be treated differently because they had

been arrested u/s 5(2) of the Prevention of Corruption Act 2006.

Argument of State counsel that the petitioners would tamper with the prosecution evidence, too appears to be conjectural and a mere surmise.

The petitioners have remained under custodial investigation for over a week. They, under the Service Rules applicable to them are deemed to have

been suspended.

11. Therefore, I do not think it to be appropriate to keep them in police custody any more lest their detention in custody may amount to

punishment sans trial.

12. For all what has been said above, these applications are allowed and petitioners are directed to be released from custody on their furnishing

personal recognizance and recognizance of a surety each, in the amount of Rs. 10,000/-to the satisfaction of Registrar Judicial of this Court. The

petitioners shall file an undertaking that they would not come directly or indirectly in contact with the prosecution witnesses and shall not impede in

any manner whatsoever, the course of investigation.