

(2021) 02 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Bail Application No. 126 Of 2020, Criminal Miscellaneous No. 703, 704 Of 2020

Mudasir Ahmad Dar

APPELLANT

Vs

Union Territory Of Jammu And Kashmir &Anr

RESPONDENT

Date of Decision : 02-02-2021

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 15, 37

Citation : (2021) 02 J&K CK 0001

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : A. R. Khan, Aseem Sawhney

Final Decision : Disposed Of

Judgement

1. By medium of this bail application, the applicant/ accused is seeking bail in connection with case bearing FIR No. 198/2017 registered against him

by Police Station, Bahu Fort, Jammu, for the commission of offences punishable under Section 8/15 of the Narcotic Drugs and Psychotropic

Substances Act, 1985 (hereinafter referred to as "the Act of 1985").

2. The brief facts of the case, as come to the fore from the perusal of the pleadings on record, are that on 25.08.2017, a truck bearing No. JK03C-

6450 was stopped for checking, and during search of the vehicle, 60 KG of Poppy straw was recovered from the truck. It is also alleged that the

driver of the said truck fled away from the spot. Consequently, offences under Section 8/15 of the Act of 1985 were found to have been made out

against the applicant/ accused and, accordingly, a case bearing FIR No. 198/2017 was registered against him for the commission of the aforesaid

offences at Police Station, Bahu Fort, Jammu, with which the investigation

ensued. Thereafter, a period of almost nine months the applicant was implicated in this case on the statement of the witness Nos., 6, 7 and 8 in the Challan, who are claiming that they are the owners of the above mentioned truck and upon the statement which have been recorded after a period of nine months, applicant was implicated in this case and accordingly, Challan came to be presented before the Court of learned Additional Sessions Judge, Jammu, whereafter the matter is pending trial before the said Court. The applicant/ accused filed an application for the grant of bail in his favour in the FIR aforesaid before the Court of learned Additional Sessions Judge, Jammu, which came to be rejected by an order dated 29.06.2020. The applicant has now filed the instant application before this Court for the grant of bail in his favour, inter alia, on the grounds that there is no evidence against the applicant in the whole Challan and the applicant is having no connection with the seizure of contraband substance, sampling, re-sealing and safe custody of the contraband substances and moreover the contraband substances have not been recovered from the applicant and there is no eye witness deposing anything against the applicant/accused, but it is the witnesses 6, 7 and 8, who after a period of nine months stated that the applicant is their driver. It is stated that the possession of the contraband, that is 60 KG of Poppy Straw, falls within the scales of the "commercial quantity", therefore, rigor of Section 37 of the Act of 1985 is applicable, however, at the same time there are reasonable grounds for believing that the applicant is innocent and he has no connection with the commission of offence. It is also stated that the applicant will not tamper with the prosecution evidence and will abide by the conditions whatsoever are imposed on him, in case he is admitted to bail.

3. Objections stand filed on behalf of the respondents, resisting and controverting the averments made by the applicant/ accused in his application. It is stated that 60 KG Poppy Straw were recovered from the possession of the applicant/ accused. The applicant has committed a heinous offence. The menace of the drugs has eaten into the vitals of the society. It is a crime against the society and the societal concerns have to be guarded with zeal and zest. The motion so preferred by the applicant seeking admission to bail in relation to the above referred crime is devoid of any merit and, as such, the same deserves to be rejected.

4. Heard learned counsel for the parties, perused the pleadings on record and considered the matter.

5. In terms of well settled position of law, as evolved by the Supreme Court in a catena of judicial dictums on the subject governing the grant of bail,

there is no strait jacket formula or settled rules for the use of discretion, but, at the time of deciding the question of 'bail or jail' in non-bailable offences,

the Court concerned has to utilize its judicial discretion, not only that, as per the settled law, the discretion to grant bail in cases of non-bailable

offences has to be exercised according to the rules and principles as laid down by the Code and various judicial decisions. In bail applications,

generally, it has been laid down, from the earliest times, that the object of bail is to secure the appearance of the accused person at his trial by

reasonable amount of bail. The object of bail is neither punitive nor preventative, but the learned trial Court appears to have applied it in the reverse.

Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called

upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent

until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody, pending completion of trial, could be a cause

of great hardship. From time to time, necessity demanded that some un-convicted persons should be held in custody pending trial to secure their

attendance at the trial, but, in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty

enshrined in the Constitution that any person should be punished in respect of any matter, upon which he has not been convicted or that, in any

circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses, if left at liberty, save in the most

extraordinary circumstances. Besides the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any

imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of

former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste

of imprisonment as a lesson.

6. It also needs to be said that the case of the applicant does not fall within the parameters of the offences that are punishable with death or

imprisonment of life. Therefore, there appears to be no reasonable ground for declining bail to the applicant.

7. Deprivation of liberty is tantamount to punishment. The principle that punishment begins after conviction and that every man is deemed to be

innocent unless duly tried and duly found guilty, has its application to the facts of the instant case in all the fours. The object of the bail is to seek

attendance and appearance of the accused at the trial by a reasonable amount of bail. Bail cannot be withheld as a means of punishment. Prison hell

destroys the tender sentiments of a person. The applicant/ applicant has been languishing in the jail for so many months by now. The applicant/

accused has to prepare for his defence which is of an essence in a criminal trial. The discretion has to be exercised on well based foundations of law

and one cannot get swayed by sentiments. Temper and passion have no role to play in exercising the discretion for the grant of bail.

8. The aforesaid view is fortified by the law laid down by two Coordinate Benches of this High Court, one passed at this wing; â??Kishore Sharma

V. State; BA No. 151/2017? and the other at the Srinagar wing; â??Firdous Ahmad Payer V. State of JK; BA No. 133/2018?.

9. Less said about evidence against the applicant in the case is needed to secure the ends of justice as otherwise it may prejudice the rights of the

parties, but a mention that the recovery is not made from the applicant instant has become necessary.

10. For all what has been said and done hereinabove, the applicant is admitted to bail, in case he furnishes a personal bond to the tune of Rs.50.00

(rupees fifty thousand only) with a surety of the like amount to the satisfaction of the Superintendent of the jail wherein the applicant is lodged at the

present moment, on the following terms and conditions:

i. That he shall remain present before the trial Court on all hearings unless exempted under valid and legal grounds;

ii. That he shall not leave the territorial limits of the jurisdiction of the trial Court without seeking permission; and

iii. That he shall not tamper or intimidate the prosecution witnesses.

11. Bail Application disposed of as above, alongwith the connected CrIM(s).

12. Registry, besides conveying a copy of this order to the learned trial Court for information, shall also forthwith send a copy of this order to the concerned Jail Superintendent for compliance.