

(2019) 02 J&K CK 0127

In the Jammu And Kashmir High Court

Case No : Bail Application (B.A) No. 21, 23 Of 2019

Mukhtar Abas Khan Ors

APPELLANT

Vs

State Of Jammu & Kashmir Through Ps Anantnag Ors

RESPONDENT

Date of Decision : 27-02-2019

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 498

Citation : (2019) 02 J&K CK 0127

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Mohammad Ashraf Bhat, G. Q. Bhat, N. H. Shah

Judgement

1. Petitioners herein having been arrested on 01-01-2019 and 07-01-2019 respectively in case FIR No. 02/2019 by Police Station Anantnag for commission of offence punishable under Section 420, 467, 468 RPC 5 (2) Prevention of Corruption Act, 66 C of I. T Act. The genesis of the case as is stemmed in the information send to the police Station concerned by the District Magistrate/ Deputy Commissioner, Anantnag in terms of which attention of the police has been brought towards the fact that the signatures of the Deputy Commissioner, Anantnag have been forged and some communications have been addressed to the various quarters.

2. After their arrest, petitioners herein have moved a petition for grant of ball before the learned Additional Sessions Judge, Anantnag on 08-01-2019 along with some other accused was dismissed on 22-01-2019 with the following observation:

"In view of the facts above referred and the circumstances of the instant case wherein the investigation is in its infancy and the fact that there is possibility of the accused intimidating/winning over the witness as also keeping in view the gravity of the offence and the larger public interest the four applications for bail are dismissed."

3. By medium of the instant applications, petitioners have submitted that they are innocent and have been falsely dragged in the case that has no basis at all. It is further submitted that their incarceration in jail has propensity of punishing them before being held guilty. It is also their contention that learned Additional Sessions Judge, Anantnag has wrongly rejected their applications for grant of bail.

4. The investigating agency had been directed to produce the case diary which was accordingly submitted and returned. Perusal of same reveals that the opinion of FSL has been sought to be procured regarding the genuineness of the signatures attributed to the accused/petitioners herein and other persons which according to the investigating agency are privy to the conspiracy. The communication in this regard has been forwarded to the Director FSL on 22-02-2018.

5. It is submitted by the learned counsel for the petitioners that the petitioners are entitled to concession of bail as no purpose would be served by keeping them in judicial custody. The petitioners herein according to the learned counsel for the petitioner are innocent and are having right to be freed to prepare the defence. There is change of circumstances from the time when the earlier bail applications have been considered and rejected by the learned Additional Sessions Judge, Srinagar as statement of the witnesses are admitted to have been recorded. Reasonable opportunity had been available with the investigating agency to take the case to its logical conclusion and so it would be in the ends of justice so to admit accused/petitioners to the bail.

6. On the other hand learned Senior AAG submits that the petitions moved bail by the accused/petitioners are to be rejected having regard to the seriousness of the offence and impact of the alleged crime on the society. The societal interest are required to be guarded and individual liberty is to lean in favour of the public interest. For concluding the investigation some records in the office of Divisional Commissioner Kashmir are also to be gone into and may have to be seized and in case the accused/petitioners are admitted to bail, the investigation of the case will stand hampered. Furthermore according to him other ramifications of the matter needs to be given proper thought as there are reasonable basis to hold that some other persons are privy to the criminal conspiracy who have to be unearthed and the offenders booked under law.

7. I have given a thoughtful consideration of the material placed before me. It requires to be noted herein that in the First Information Report/objections, the petitioner No. 1 is alleged to have facilitated the fabrication of the certain communications purported to have been signed by the Deputy Commissioner, Anantnag with intent to confer illegal benefits on certain persons. Petitioner No. 2 is alleged to have used the computer which he used to operate at Khidmat Centre for fabricating these communications. Seizure of some communications is shown to have been made on the perusal of the case diary and documents have been sent to the FSL for examination. The investigating agency has admitted to have seized some of these communications and then send for FSL examination

Statement of some other witness have been recorded. Official stamp purportedly to be of Deputy Commissioner Anantnag has also been seized. It is being seen above that the bail application presented by the petitioners has been rejected by the learned Sessions Judge, Anantnag while noting that the investigation of the case is at its infancy stage and there is possibility of the accused intimidating/ winning over the witness.

8. It is being submitted that by the learned counsel for the petitioners that the learned Additional Sessions Judge, Anantnag who is designated as Special Judge Anti Corruption for the said District is not available at the District and having proceeded on leave, the jurisdiction of this Court has been as such invoked by the petitioners in terms of the Section 498 Cr. PC.

9. The power of the High Court in terms of Section 498 Cr. PC nonetheless being absolute in nature, the discretion vested in terms of the said provision has to be exercised judiciously. In *Emperor v. Hutchinson* [AIR 1931 All 356, 358 : 32 Cri LJ 1271] (Merut Conspiracy Case) it had been emphasized that the power of High Court under Section 498 Cr. PC are plenary in nature. May it be so, the power is discretionary in nature and has to be used properly. It would be thus unwise to make an attempt to lay down any particular rules for use of discretion. Their Lordships in *In Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 while making reference of High court of Calcutta in *Nagendra v. King-Emperor* [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] held that that the object of bail is to secure the attendance of the accused to the trial and thus the Courts have to examine the issue of grant of bail in this context. On survey of various cases, their lordships emphasized that the grant of bail being a rule, the underlined principle to be borne in mind is that a person who is free would be in a better position to look after his case and properly defend himself and has as presumably innocent person therefore entitled to freedom and every opportunity to look after his own case.

In *Gurcharan Singh v. State (Delhi Administration)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] their lordship has observed that:

"There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."

The general principles which normally weigh the courts in granting bail in non-bailable offence have been explained by the Hon'ble Apex Court in *State Vs. Capt. Jagjit Singh and Gurcharan Singh Vs. State (Delhi) Admn.*), they are

- i) the nature and seriousness of the offence;
- ii) The character of the evidence;
- iii) Circumstances which are peculiar of the accused;
- iv) A reasonable possibility of the presence of the accused not being secured at

the trial;

v) Reasonable apprehension of witnesses being tampered with.

Their lordship of Hon'ble Apex Court in *Gudikanti Narasimhulu v. Public Prosecutor* (1978) 1 SCC 240" held that

"... the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. . ."

10. The facts remains that each case has its own merits and peculiarities and so the entitlement of any person to bail is accordingly to be considered. The courts have been reluctant however to grant bail in case where the accusations are serious in nature and likelihood of interests of the public or a State being put at peril. In granting bail at initial stage, a fine balance is however required to be maintained between the individual interest and a societal interest.

11. The bail application earlier presented has been rejected at initial stage. Their appears to be a force in the contention raised on behalf of the learned counsel for the petitioners that the investigating agency thereafter had reasonable opportunity to proceed ahead with the investigation and to examine properly the merit of the pleas forming subject matter of its investigation. It is not being put forth by the investigating agency that the character or antecedents of the accused are such which would furnish basis to presume that they may indulge in any such act which would thwart the course of justice or precisely to state would tamper with the process of investigation or intimidate the prosecution witnesses. Nonetheless the respondents have raised the contention forcibly that the charge levelled against the accused/petitioners is grave which would not in my opinion be a sole factor to be taken note of in considering the entitlement of the petitioners to bail. Having regard to the fact that the accused/petitioners have been taken into custody on 01-01-2019 and 07-01-2019 and the investigating agency again had reasonable time to proceed with the investigation. Further detention of petitioners in my opinion in custody would likely to result in pre trial conviction and as such is deemed proper to direct the petitioners to be admitted on interim bail while the respondents being provided opportunity to produce any material, if, it has in its possession to bring to the notice of the Court, necessitating the withdrawal of the concession. Therefore, petitioners herein are admitted to interim bail subject to furnishing bail bond by two sureties in the amount of Rs. 50,000/- each to the satisfaction of learned Registrar Judicial, conditioned that the petitioners:

i) Shall appear before the investigating agency as and when directed and would not hamper the process of investigation in any way.

ii) Shall not leave territory of the State without permission of the trial court.

iii) Shall not tamper with the prosecution evidence and

iv) Shall not change their place of residence until permitted.

12. Updated status of the investigation may be submitted by the investigating agency before next date of hearing along with the material, if any, it desires to bring to the notice of the Court needed for reconsideration of the interim direction passed herein.

13. List on 4th April 2019.

14. A copy of this order be sent to Superintendent of concerned jail where the petitioners are lodged as well as to the Registrar Judicial as also to learned Additional Sessions Judge, Anantnag.