

(2021) 12 J&K CK 0040

In the Jammu And Kashmir High Court

Case No : Bail Application No. 399, 400 Of 2021, Criminal Miscellaneous Cases
No. 2316 Of 2021

Predhiman Krishan Koul And Others

APPELLANT

Vs

Union Territory Of J&K

RESPONDENT

Date of Decision : 27-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 19, 21
Prevention Of Corruption Act, 1988 — Section 5(2), 7, 13(1), 13(2)
Indian Penal Code, 1860 — Section 109, 120B, 420, 420B, 447, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 437, 497, 497(437)
Prevention Of Corruption Act, 2006 — Section 5(2)
Prevention Of Damage To Public Property Act, 1984 — Section 3
Arms Act, 1959 — Section 3, 4, 25
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 306, 498A
Protection Of Children From Sexual Offences Act, 2012 — Section 12

Citation : (2021) 12 J&K CK 0040

Hon'ble Judges : Mohan Lal Manhas, J

Bench : Single Bench

Advocate : P.N Raina, Jahanjaib A. Hamal, Diksha Handoo, S. S Ahmed, Shiekh Najeeb, Monika Kohli

Final Decision : Disposed Of

Judgement

Mohan Lal Manhas, J

1. By this common order, I would disposed of two bail applications, one filed by A-1, Predhiman Krishan Koul and another filed by A-2, Hilal Ahmed Sheikh as both of them arise out of common FIR, RC0042021A0012 dated 01.02.2021 registered with Police Station CBI, ACB, Jammu for commission of offences U/s 7 of Prevention of Corruption Act, 1988 r/w 120-B IPC.

2. A-1, Predhiman Krishan Koul has claimed bail on the grounds, that he is posted as Technical Officer (T.O) to Superintendent Engineer (S.E) PW (R&B) Circle Udhampur-Reasi; the complainant was allotted some work for construction

of Medical Sub-Centre in District Reasi in the year 2017-2018 whereas he was posted to his present place of posting only in 2020; he has nothing to do with the said allotment of work as he is working as Technical Officer to Superintendent Engineer Udhampur and he had absolutely no role to play in respect to any verification of bills relating to work executed by the complainant; complainant came with a bill which was far exceeding the amount which had been sanctioned for the work allotted to the complainant; he was arrested on 02.12.2021 by the respondent-CBI and now he is presently lodged in judicial custody; he had filed bail application before the CBI Court Jammu which was declined by the said Court vide its order dated 09.12.2021; his liberty is of paramount consideration as guaranteed under the Constitution and it would be contrary to the concept of personal liberty if any person is punished in respect of any alleged matter for which he has not been found guilty or convicted thereof; grant of bail is a rule and its refusal is an exception; he is an innocent and has not committed any offence muchless the offence whereas the CBI has charged him taking recourse to Section 7 of Prevention of Corruption Act 1988 r/w 120-B IPC; the allegations made against him would not constitute any offence yet the Court below has only on one singular ground declined his request for bail; the judgments which were relied on relating to fairness of investigation and right to life and liberty have not even been considered by the trial court; the accused from whom alleged bribe money has been recovered has been admitted to bail by the trial court; his incarceration would result in violation of his right to life guaranteed to him under the Constitution of India; it is true that the society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State, but it is equally true that the order granting or refusing the bail must reflect perfect balance between the conflicting interests namely sanctity of individual liberty and the interest of the society; the fundamental principle of criminal jurisprudence is that the presumption of innocence always lies in favour of accused until he is found guilty; the seriousness of the charge is no doubt one of the considerations while considering bail applications but that is not the only test or the factor in the bail applications; generally the object of bail is to secure the presence of the accused person at the trial by reasonable amount of bail, the object of bail is neither punitive nor preventative however the deprivation of liberty must be considered a punishment, the court 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 found guilty; he undertakes to abide by all the conditions imposed by the court if granted bail.

3. A-2, Hilal Ahmed Sheikh has claimed bail on the grounds, that he is a permanent resident/domicile of the Union Territory of Jammu and Kashmir and is a law abiding citizen of India and came to be posted as Superintending Engineer PWD (R&B) Circle Udhampur Reasi and joined on 01.10.2021; on 01.12.2021 a complaint was lodged by one Mohd. Adim Parihar wherein the complainant alleged that he (A-2) has demanded bribe of Rs. 3 lacs from him for grant of technical sanction for construction of Medical Sub-Centre in District Reasi in the

year 2017-2018 and accordingly the above mentioned FIR was registered on 01.12.2021 for commission of offence u/s 7 of Prevention of Corruption Act 1988 against him and two other accused namely Sanjay Koul, JE, PWD(R&B) Sub Division Lander & A-1 Predhiman Krishan Koul, Technical Officer to Superintendent Engineer PWD (R&B) Circle Udhampur-Reasi; On the basis of said complaint the CBI laid trap at PWD Guest House at Udhampur on 01.12.2021 and recovered the alleged graft amount of Rs. 40,000/- in cash and cheque of Rs. 1,10,000/- lying in an envelope from Sanjay Koul JE and thereafter CBI arrested him and other aforesaid two officials on 02.12.2021; he on 03.12.2021 applied for bail before the Court of learned Special Judge CBI Anti Corruption Cases Jammu, who vide its order dated 09.12.2021 dismissed the bail application; he has been implicated in a frivolous case at the behest of the contractor-complainant as on 29.11.2021 he refused to entertain the bill of the complainant amounting to Rs. 80 lacs for the reasons that on spot the work was done only for an amount of Rs. 60 lacs approximately and finding disparity in the work done, the bill presented by the complainant was returned to the concerned Executive Engineer and perhaps this infuriated the complainant whereby he filed frivolous complaint against him on 01.12.2021; he has neither accepted any bribe money from the complainant nor any amount has been recovered from him during the said raid conducted by the CBI as the recovery of alleged bribe amount was made by CBI from one Sanjay Koul JE who has been enlarged on bail by the court below on 04.12.2021; the CBI has already seized the alleged incriminating material and his custodial interrogation is not required; he is presently lodged in judicial custody and has been suspended from services on 04.12.2021 and cannot have any approach to any evidence; the fundamental principle of criminal jurisprudence is that the presumption of innocence always lies in favour of the accused until he is found guilty, and by keeping him in judicial custody would amount to incarceration; there are no special provisions providing severe/stringent punishment in the cases under the Prevention of Corruption Act if a person is found guilty, and the general principles govern the grant or refusal of bail and provisions of Section 437 CrPC are required to be kept in mind while considering the bail applications in non-bailable offences; the bail is rule and the jail is exception would always be a guiding factor for the court to consider the bail applications; he is also suffering from severe neuro ailment and often gets seizure and fits and not only this his daughter is also suffering from similar disorder and besides this he is having old aged mother of 90 years and his wife, and he being the only male caretaker for the family and on this account also a humane approach may kindly be resorted to in consideration of his bail application.

4. Respondent/CBI per-contra, by filing the objections has opposed the bails on the grounds, that case FIR No. RC0042021A0012 dated 01.02.2021 has been registered by the CBI, ACB, Jammu u/s 7 of Prevention of Corruption Act 1988 on the basis of complaint dated 01.12.2021 lodged by one Mohd Adiem Parihar R/o Village Kumat Tehsil Rajgarh District Ramban for demand of bribe of Rs. 3.00

lacs by the accused Hilal Ahmed Sheikh SE, PWD (R&B) Udhampur for giving technical sanction of construction work allotted to Firm of the complainant; on receipt of the complaint, the verification thereof was carried out by Sh. Sanjay Kumar, PSI wherein the demand of bribe by Hilal Ahmad Sheikh SE, PWD (R&B) Circle Udhampur from the complainant was confirmed pursuant to which a trap was laid in office of the Superintending Engineer, PWD (R&B) Circle Udhampur and the accused person namely Sanjay Koul JE was caught red-handed while accepting bribe of Rs. 1.50 lakh from the complainant on behalf of accused Hilal Ahmad Sheikh on the instructions of Predhimen Krishan Koul (TO); the accused persons namely Hilal Ahmed Sheikh, SE and Predhimen Krishan Koul-TO entered into criminal conspiracy with one another person, demanded and accepted an amount of Rs. 1.50 lakhs (Rs. 40,000/- in cash and a cheque of Rs. 1,10,000/-) through Sanjay Koul JE, whereby, the said accused persons were arrested on 02.12.2021 and taken into custody after following all the legal procedure; The information about their arrest was given to their family members.

5. Sh. P. N. Raina Ld. Sr. Counsel for petitioners/accused while advancing the case of petitioners/accused for grant of bails, has strenuously articulated arguments, that as per the allegations against petitioners/accused, on 01.12.2021 the CBI laid a trap at PWD Guest House Udhampur and recovered the alleged graft amount of Rs. 40,000/- in cash and cheque of Rs. 1,10,000/- lying in a envelope from accused Sanjay Koul JE who has already been bailed out by the trial Court vide order dated 04.12.2021 while the petitioners/accused since the date of their arrest on 02.12.2021 after completion of their CBI custody are presently lying in judicial custody and are not required for any further investigation. It is argued, that the petitioners/accused have neither accepted any bribe money nor the same has been recovered from them during the alleged trap, and moreso, the CBI has already seized the alleged incriminating material from the petitioners/accused which are not required for any further custodial interrogation. It is vehemently argued, that the fundamental principle of criminal jurisprudence is that the presumption of innocence always lies in favour of the accused until proved and found guilty, and keeping the petitioners/accused in judicial custody in further incarceration will amount to inflicting pre-trial punishment which is against the principle of criminal jurisprudence, no special provisions for bail are provided in the Prevention of Corruption Act and the bail application of petitioners/accused is to be governed under the provisions of Section 437 CrPC, the 'bail is rule ' and 'jail is exception ', one of the accused A2-Hilal Ahmad Sheikh is suffering from neuro ailment and is having his old aged mother of 90 years and his wife, and he being the only male caretaker of his family, as such, humane approach needs to be applied in consideration of his bail. It is moreso argued, that the personal liberty as enshrined in the Constitution of India is of paramount importance which should not be deprived, petitioners/accused cannot be kept in detention for an indefinite period only upon the belief/mere apprehension that they will tamper with the prosecution evidence which cannot be expected as all the witnesses of the case are the officials of the

CBI Department and none can expect that they will be influenced by petitioners/accused, in bail applications the general principle is that the object of bail is to secure appearance of the accused person at his trial by reasonable amount of bail and deprivation of liberty must be considered a punishment, the court owe more than verbal respect to the principle that punishment begins after conviction and that every accused is deemed to be innocent until duly tried and found guilty.

To buttress his arguments, Id. senior counsel has relied upon the decisions of (i) Sanjay Chandra-Appellant versus Central Bureau of Investigation-Respondent (2012) 1 Supreme Court Cases 40, (ii) 2007 Supreme (J&K) 48 (Mohd. Razak & Anr.-Appellant Versus State of J&K & Anr.-Respondent), (iii) judgment/order of J&K High Court rendered in Bail App No. 16/2020 (Rajesh Kumar-Applicant v/s Union Territory of Jammu and Kashmir-Non-applicant) & (iv) judgment/order of J&K High Court rendered in Bail App No. 174/2020 (Umesh Kumar- Petitioner(s) vs Incharge Police Station CBI and anr.- Respondent(s)).

6. Ms. Monika Kohli Id. counsel for the respondent-CBI, per-contra, has sought the rejection of the bails of the petitioners/accused by vociferously projecting arguments, that on 01.12.2021 a trap was laid in PWD office Udhampur wherein one of the accused namely Sanjay Koul JE was caught red handed while accepting bribe of Rs. 1.50 lakhs from the complainant on behalf of A2-Hilal Ahmad Sheikh on the instructions of A-1 Predhimen Krishan Koul who had entered into a criminal conspiracy and demanded bribe from the complainant, pursuant to which Rs. 40,000/- was recovered in cash alongwith a cheque of Rs. 1.10 lakhs whereby the petitioners/accused were arrested on 02.12.2021 and taken into custody. It is argued, that the case is at very initial stage of investigation and the petitioners/accused cannot claim bails as a matter of right as they are indicted in non-bailable offence, and there is every likelihood that if the petitioners/accused are enlarged on bails at this stage they may tamper with the prosecution evidence and influence the witnesses thereby causing irreparable harm to the fair investigation of the case, moreso, petitioners/accused have abused their official positions and have committed heinous crime under the provisions of Prevention of Corruption Act, petitioners/accused are highly influential and their criminal act is against the societal interest. It is moreso argued, that while granting bail the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment etc. and larger interests of the public/State, the words 'reasonable grounds for believing' used by the Legislature for the purpose of granting bail means, that the Court while dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused, due to involvement of government officials in accepting the illegal gratification/bribe the confidence of common person has been shaken, twenty five (25) days is not too sufficient a time to complete the investigation and moreso the respondents have found cash and incriminating documents from the residential premises of the petitioners/accused. In support of her arguments, Id. counsel for the respondent-CBI has placed reliance upon the decisions reported in, (i) (2013) 7 Scale 15 (Central

Bureau of Investigation vs V. Vijay Sai Reddy), (ii) 2017(2) RCR (Criminal) 232 (Avneesh Kumar Gupta v CBI) & (iii) judgment/order of J&K High Court rendered in Bail App No. 39/2021 (Darbara Singh-Applicant(s) v/s Union Territory of J&K-Respondent(s)).

7. Heard Ld. Sr. Counsel for petitioners/accused & Ld. Counsel for respondent/CBI. I have pursued the contents of bail applications and objections filed by the respondent/CBI. I have also bestowed my thoughtful consideration to the material aspects involved in the case, have scanned the judgments relied upon by both the sides and have gone through the relevant law on the subject matter meticulously.

8. Before deciding the case in hand, I would like to enumerate the factors which should be taken in consideration while granting or refusing bail in a non-bailable case. Hon'ble Supreme Court of India in case laws titled State of U.P vs Amarmani Tripathy, reported in 2005(8) SCC 21, vide paragraph-18 and in CRIMINAL APPEAL NO. 448 OF 2021 (@ SPECIAL LEAVE PETITION (CRL.) NO. 3577 OF 2020) [SUDHA SINGH ... APPELLANT(S) VERSUS THE STATE OF UTTAR PRADESH & ANR. ...RESPONDENT(S), judgment delivered on 24-04-2021] has culled out certain factors to be taken in consideration while deciding bail application in non-bailable offences as under:-

'It is well settled that the matters to be considered in an application for the bail are:-

(I) whether there is any prima-facie or reasonable ground to believe that the accused has committed the offence;

(II) nature and gravity of charge;

(III) severity of the punishment in the event of conviction; (IV) danger of the accused absconding or fleeing if released on bail;

(V) character, behavior, means, position and standing of the accused;

(VI) likelihood of the offence being repeated;

(VII) reasonable apprehension of the witnesses being tampered with; and

(VIII) danger, of-course the justice being thwarted by grant of bail.

Indeed, these guidelines are not exhaustive, nonetheless, these have to be considered while passing an order in a bail application in a non-bailable offence. The aforementioned factors for grant or refusal of bail in non-bailable offences as the case in hand are discussed under the following headings.

(I) Prima-facie or reasonable ground to believe that the petitioners/accused have committed the offences:-

It is profitable to reiterate here, that case FIR RC 0042021A0012 dated 01-02-2021 has been registered by the CBI, ACB, Jammu u/s 7 of Prevention of

Corruption Act 1988 against petitioners/accused on the basis of complaint dated 01.12.2021 lodged by one Mohd Adiem Parihar R/o Village Kumat Tehsil Rajgarh District Ramban for demand of bribe of Rs. 3.00 lacs by the accused A-2 Hilal Ahmed Sheikh SE, PWD (R&B) Udhampur for giving technical sanction of construction work allotted to Firm of the complainant, on receipt of the complaint the verification thereof was carried out by Sh. Sanjay Kumar PSI wherein the demand of bribe by A-2 Hilal Ahmad Sheikh SE, PWD (R&B) Circle Udhampur from the complainant was confirmed, pursuant to which a trap was laid in office of the Superintending Engineer, PWD (R&B) Circle Udhampur and the accused person namely Sanjay Koul JE was caught red-handed while accepting bribe of Rs. 1.50 lakh from the complainant on behalf of A-2 Hilal Ahmad Sheikh on the instructions of A-1 Predhimen Krishan Koul (TO), the accused persons namely Hilal Ahmed Sheikh, SE and Predhimen Krishan Koul-TO entered into criminal conspiracy with one another person, demanded and accepted an amount of Rs. 1.50 lakhs (Rs. 40,000/- in cash and a cheque of Rs. 1,10,000/-) through Sanjay Koul JE, whereby, the said accused persons were arrested on 02.12.2021. From the allegations set out in the FIR, it clearly transpires, that there is a prima-facie case against the petitioners/accused.

The moot point for determination before this court is, even when there is a prima-facie case against the accused, what should be the approach of court in the matter of grant or refusal of bail ?

In this regard, Hon'ble J&K High Court in a case law reported in, 2010 (3) JKJ 129 (HC) [Jagdish Kumar & Ors. Versus State and Ors], the judgment/order rendered by Hon 'ble Mr. Justice Sunil Hali (His Lordship the then was Hon 'ble Judge of J&K High Court) while granting bail to accused indicted for commission of offences u/ss 306/498-A RPC and while discussing the principles of law in regard to "prima-facie case" approach of court in matter of bail' and 'question of influencing prosecution witnesses' in paras 17,18 & 19 of the judgment held as under:-

'17.While applying the aforementioned principles, it is necessary for the court to examine the nature and gravity of the circumstances under which the offence is committed. Existence of a prima-facie case is essential. If there is no prima-facie case, there is no question of considering other circumstances. Even where a prima-facie case is established, the approach of the court in the matter of bail, is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tempering with the evidence.

18. The circumstances which have been brought into focus by the respondents as also by the learned sessions Judge, Samba are that the accused persons tried to influence the investigation at the initial stage. The post mortem was got conducted by the Board only through the intervention of the Dy. Commissioner. Nothing has been revealed nor any material has been shown by the prosecution or by the learned Principal Sessions Judge to substantiate this plea. It is mere

bald assertion, which cannot be accepted unless there is some material to that extent.

19. Regarding the question of influencing the witnesses, it be seen that material witnesses are parents and brothers of the deceased, which cannot be influenced. Mere allegation that accused persons are influential is not sufficient unless there is some material to that extent.

Ratio of the judgment (Supra) makes the legal proposition abundantly clear, that even if prima facie case is established against accused, the approach of the court in granting bail should be that the accused should not be detained by way of punishment, and regarding influencing of witnesses, the material witnesses cannot be expected to be won over by the accused.

In another case law reported in 2019 Supreme (J&K) 220 (Naresh Singh-appellant Versus State of J&K- Respondents), His Lordships Hon 'ble Mr. Justice Tashi Rabstan while granting bail to the accused indicted for commission of offences u/ss 12 POCSO Act r/w 342 RPC and while discussing the principles of 'personal liberty' enshrined in Article 21 of the Constitution of India vis-à-vis the general rule that 'bail is rule ' and 'jail is an exception ', in paras 7,8&12 of the judgment held as under:-

7. It is a trite law that personal liberty is a very precious fundamental right enshrined in Article 21 of the Constitution of India and deprivation of liberty is a matter of grave concern. It should be curtailed only when it becomes imperative to the peculiar facts and circumstances of the case. When a person is arrested on the allegations of commission of non-bailable offence, two conflicting interests are pitted against each other, that is, liberty of individual involved and interest of society so as to prevent crime and punish criminal. It becomes responsibility of the courts to weigh the contrary factors. The object of detaining a person in judicial custody is to direct him to join the investigation, secure his presence at trial, he may not interfere with investigation, intimidate witnesses, tamper with evidence, flee from justice, chances of repeating the offence etc., and if this purpose can be fulfilled by putting certain conditions and securing bail bonds, it would be an ideal blending of two apparently conflicting claims.

8. A fundamental postulate of Criminal Jurisprudence is the presumption of innocence, which means a person is believed to be innocent until found guilty. Another facet of our Criminal Jurisprudence is that grant of bail is the general rule and putting a person in jail is an exception (Bail but not jail). Grant or denial of bail is entirely the discretion of a Judge considering a case, but such discretion should be exercised judiciously and not arbitrarily.

12. In the present case, the fact that out of nine prosecution witnesses, seven material witnesses stands already examined before the court including prosecutrix, so the mere apprehension of the respondent that the applicant-accused if enlarged on bail would temper with the prosecution evidence or possibility of his winning over the prosecution witnesses can be ruled out. It is a

settled law that mere apprehension that accused would temper with the prosecution evidence or intimidate the witnesses cannot be a ground to refuse the bail unless the prosecution shows that accused actually tried such tempering/intimidation. My view to release the applicant-accused on bail further gets fortified from the statement of prosecutrix so also from the prosecution story that on 28.10.2018, when she went to School and alighted from the school van, the accused who was already there along with his vehicle forcibly pulled her inside his car and molested and confined her in his car for two hours, and when the parents of the prosecutrix reached near the School, accused on seeing them pushed her outside of his Car and fled away, which prima facie seems false as 28th of October, 2018 falls Sunday, and being Sunday there were no extra classes by the School Authorities to attend the tuition classes and neither any school buses were operated on that day. The apprehension of the respondent that applicant-accused may abscond from justice can be taken care of by imposing certain terms and conditions.

Ratio of the judgment (Supra) also makes the legal proposition manifest, that fundamental postulate of criminal jurisprudence is the presumption of innocence lies in favour of accused who is presumed to be innocent till guilt is proved, grant of bail is a general rule and its refusal is an exception and deprivation of personal liberty must be considered as punishment.

In (2012) 1 Supreme Court Cases 40 [SANJAY CHANDRA-Appellant versus CENTRAL BUREAU OF INVESTIGATION-Respondent, relied by Ld. Counsel for petitioners/accused, Hon 'ble Supreme Court of India while granting bails to accused indicted in 2G Spectrum Scam Case for commission of offences u/ss 420-B, 468,471/109 IPC r/w Sec. 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 and while expounding the principle of law that 'the object of bail is to secure appearance of accused persons at trial and deprivation of liberty is a punishment ', in paras 21, 22, 24, 25, 29, 34, 35 & 36 of the judgment/order observed as under:-

21. 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. 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.

22. 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 demands 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.

24. In the instant case, as we have already noticed that the 'pointing finger of accusation ' against the appellants is `the seriousness of the charge '. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather 'recalibration of the scales of justice. '

25. The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.

29. In *Gudikanti Narasimhulu v. Public Prosecutor*, V.R. Krishna Iyer, J., sitting as Chamber Judge, enunciated the principles of bail thus: SCC pp. 242-46, paras 3, 5-9 & 13

'3. What, then, is 'judicial discretion ' in this bail context? In the elegant words of Benjamin Cardozo: The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life '. Wide enough in all conscience is the field of discretion that remains."

Even so it is useful to notice the tart terms of Lord Camden that 'the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to

which human nature is liable.... '

5.....Perhaps, this is an overly simplistic statement and we must remember the constitutional focus in Articles 21 and 19 before following diffuse observations and practices in the English system. Even in England there is a growing awareness that the working of the bail system requires a second look from the point of view of correct legal criteria and sound principles, as has been pointed out by Dr Bottomley.

6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the Court punishing him with imprisonment. In this perspective, relevance of considerations is regulated by their nexus with the likely absence of the applicant for fear of a severe sentence, if such be plausible in the case. As Erle. J. indicated, when the crime charged (of which a conviction has been sustained) is of the highest magnitude and the punishment of it assigned by law is of extreme severity, the Court may reasonably presume, some evidence warranting, that no amount of bail would secure the presence of the convict at the stage of judgment, should he be enlarged. Lord Campbell, C.J. concurred in this approach in that case and Coleridge J. set down the order of priorities as follows:

'I do not think that an accused party is detained in custody because of his guilt, but because there are sufficient probable grounds for the charge against him as to make it proper that he should be tried, and because the detention is necessary to ensure his appearance at trial It is a very important element in considering whether the party, if admitted to bail, would appear to take his trial; and I think that in coming to a determination on that point three elements will generally be found the most important: the charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable if convicted.

In the present case, the charge is that of wilful murder; the evidence contains an admission by the prisoners of the truth of the charge, and the punishment of the offence is, by law, death. "

7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or

otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record - particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant is therefore not an exercise in irrelevance.

13. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the Court 's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding - if that be so - of innocence has been recorded by one Court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the Court into a complacent refusal. '

34. More recently, in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra* this Court observed that: (SCC p. 728, para 84)

"(84) just as liberty is precious to an individual, so is the society 's interest in maintenance of peace, law and order. Both are equally important. '

35. This Court further observed: (*Siddharam Satlingappa* case SCC p737, para 116)

"116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case. '

36. This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused [See *Babba v. State of Maharashtra*, *Vivek Kumar v. State of U.P.* & *Mahesh Kumar Bhawsinghka v. State of Delhi*.

Ratio of *Sanjay Chandra 's Case* (Supra) makes the legal provisions vis-à-vis bail abundantly clear, that the principle rule to guide release on bail is, 'to secure the presence of accused during trial, the object of bail is neither punitive nor

preventative, deprivation of liberty must be considered a punishment, 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."

In 2007 Supreme (J&K) 48 (Mohd. Razak & Anr.- Appellant Versus State of J&K & Anr.-Respondent), relied by Ld. Counsel for petitioners/accused, Hon 'ble Mr. Justice J.P. Singh (His Lordships the then was Judge of J&K High Court) while granting bail to accused persons arrested in offence u/s 5(2) of Prevention of Corruption Act, 1988 caught red handed in a trap while demanding & accepting bribe of Rs. 1000, in paras 8, 9, 10, 11 & 12 held as under:-

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 submission that the petitioners were required to be treated differently because they had been arrested under Section 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.

Ratio of the judgment (Supra) further makes the legal proposition manifestly clear, that even in cases under the Prevention of Corruption Act where no special provisions for bail are provided these cases are governed by the provisions of Section 497 (437) of the Code of Criminal Procedure and bail in such non-bailable offences may not be claimed as a matter of right, but the grant or refusal of bail is well recognized by the principle that 'bail is rule ' and 'refusal is an exception '.

In the judgment/order of J&K High Court rendered in Bail App No. 16/2020 (Rajesh Kumar-Applicant v/s Union Territory of Jammu and Kashmir-Non-applicant), relied by Ld. Counsel for petitioners/accused, Hon 'ble J&K High Court granted anticipatory bail to the accused indicted in FIR No. 0031 dated 24-01-2020 registered with P/S Nagrota for commission of offences u/ss 447/467/468/420/120-B IPC r/w Section 3 of Public Property Damage Act r/w Sec. 7 P. C. Act r/w Sections 3/4//25 Arms Act.

In judgment/order of J&K High Court rendered in Bail App No. 174/2020 (Umesh Kumar-Petitioner(s) vs Incharge Police Station CBI and anr.-Respondent(s), also relied by Ld. Counsel for petitioners/accused, Hon 'ble J&K High Court granted bail to petitioner/accused indicted in case No. RC00420209A004 for commission of offence u/s 7 of P.C. Act in a trap case wherein petitioner/accused was caught red handed while demanding and accepting bribe of Rs. 5000 from complainant.

From the ratios of the judgments of 'Sanjay Chandra?s Case ', 'Mohd Razak?s Case ', 'Rajesh Kumar?s Case ' & 'Umesh Kumar?s Case ' (Supra) relied by Ld. Sr. Counsel for petitioners/accused, the principle of law deduced is, that while considering a bail application in non-bailable offence, even where prima-facie case is established against accused, the approach of court in the matter of bail should be that 'accused should not be detained by way of punishment, material witnesses cannot be influenced, grant of bail is general rule and refusal an exception '.

In [Central Bureau of Investigation Vs. V. Vijay Sai Reddy (2013) 7 Scale 15], relied by Ld. Counsel for CBI, Hon 'ble Supreme Court held, that while granting bail court has to keep in mind various factors for grant or refusal of bail viz; nature of accusation, nature of evidence in support thereof, severity of punishment, character of accused, reasonable possibility of securing the presence of accused at trial, reasonable apprehension of witnesses being tempered with and larger interest of public/state and other similar considerations. To my considered view, the observations of the Apex Court would be strictly followed in the case in hand. In 2017(2) RCR (Criminal) 232 (Avneesh Kumar Gupta Vs CBI) relied by Ld. Counsel for CBI, Hon 'ble High Court of Uttarakhand held, that graft case is entirely difference from other common offences, as such, bail in such cases should be considered with great circumspection and the courts have to strike a balance between societal interest

and individual interest and there should be zero tolerance to the corruption. In judgment/order of J&K High Court rendered in bail App. 39/2021 (Darbara Singh-Applicant(S) V/s Union Territory of J&K-Respondent(S)], relied upon by Ld. Counsel for CBI, Hon 'ble J&K High Court in a graft case refused bail to the accused by taking into consideration the status/progress of investigation that while laying a trap accused was caught red handed on 29-01-2021 by CBI/ACB Jammu wherein while demanding and accepting bribe the bribe amount of Rs. 50,000/- was recovered from the accused and also from searches of his office and residential premises cash of Rs. 1,45,000/- from his Jammu residence and sum of Rs. 5,10,000/- was found from his Chandigarh residence alongwith other documents relating to investment in property i.e. Flat No. B-2 Dr. Ambedkar Co-Operative House Building Society Ltd. Sector 76 Mohali and Plot measuring 250 Sq yards R.K.M City Sector 111-112 SAS Nagar Mohali. It is apt to reiterate here, that none of the decisions relied upon by Ld. Counsel for CBI lay down an invariable rule of law that in all the non-bailable offences and especially in cases under Prevention of Corruption Act bail should always be refused, but the grant or refusal would depend upon the facts of the case and the stage of the investigation.

Now, coming back to the grips of present case, it is noteworthy to reiterate here, that on a trap laid on 01-12-2021 graft amount of Rs. 40,000/- in cash and cheque of Rs. 1,10,000/- was recovered from the possession of one of the accused namely Sanjay Koul JE who stands enlarged on bail by the order dated 04-12-2021 of Ld. Spl. Judge Anti-Corruption (CBI Cases) Jammu. Petitioners/accused as per the CBI case have neither accepted any bribe money from the complainant nor any bribe amount has been recovered from them during the said trap. In light of the ratios of the judgments (Supra) relied upon by Ld. Sr. Counsel for petitioners/accused, law is no longer res-integra that even if there is a prima-facie case against accused, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment and that 'bail is a rule ' and 'jail is an exception '.

(II) Nature and gravity of Charge:-

The nature and gravity of charge is not very serious. It is the allegations against petitioners/accused that on the basis of complaint, CBI laid a trap at PWD Guest House at Udhampur on 01-12-2021 and recovered alleged graft amount of Rs. 40000/- in cash and cheque of Rs. 1,10,000/- lying in an envelope from one of the accused namely Sanjay Koul JE and petitioners/accused were arrested on 02-12-2021 which led to registration of RC0042021A0012 for commission of offences u/s 7 of Prevention of Corruption Act 1988 r/w 120-B, IPC. It is true, that corruption is rampant in the society and its tentacles are spreading with alarming speed affecting the credibility of the society itself and the proper governance. As long as, there are no special provisions in force providing severe punishment and stringent provisions regarding bail during investigation and trial of cases, persons accused of offences under Prevention of Corruption Act cannot

be treated differently to deny them the consideration of bail during investigation and trial merely because they are alleged to be involved for infraction of offences under P.C. Act and their bail applications are to be governed under the provisions of Sec. 497(437) of Code of Criminal Procedure and the guiding factor would be that grant of bail is rule and refusal an exception.

(III) Severity of Punishment & danger of accused absconding or fleeing if released on bail:-

Petitioners/accused are not indicted in offences punishable with life imprisonment or death penalty, as the maximum punishment provided for commission of offence u/s 7 of P.C. Act 1988 is seven (7) years. It is beaten law, that when the punishment is severe, there is every danger of accused absconding or fleeing from justice if released on bail. More severe the punishment is, more are the chances of the accused to abscond during to the trial or flee from justice if released on bail. Petitioners/accused are Govt. Servants and vide Govt. Order No. 361-PW(R&B) of 2021 dated 04-12-2021 pending enquiry into their conduct they have been placed under suspension. Hence there are no chances of their abscondence/fleeing from justice if released on bail.

(IV) Character, behavior, means & position of the accused:-

Prior to the registration of trap case against petitioners/ accused, there are no allegations against them that they are habitual offenders or have earlier been indulged in any type of crime. Petitioners/accused are the Govt. Servants and at present are under suspension. Right from the day of their arrest on 02-12-2021 after the police/CBI custody they are now in judicial custody and nothing has been placed on record by respondent/CBI that they have exhibited any unruly behavior/conduct during investigation or during judicial custody.

(V) Likelihood of the offence being repeated:-

Petitioners/accused after their arrest on 02-12-2021 were taken into CBI custody and now are lying in judicial custody. Petitioners/accused are Govt. Servants and vide Govt. Order No. 361-PW(R&B) of 2021 dated 04-12-2021 pending enquiry into their conduct they have been placed under suspension. There are no allegations against petitioners/accused that they are habitual offenders or have earlier been indulged in any type of crime. Nothing has been placed on record that if enlarged on bail there is likelihood of petitioners/accused to repeat the offence.

(VI) Reasonable apprehension of the witnesses being tempered with:-

It is unambiguously reiterated here, that from the date of arrest of petitioners/ accused on 02-12-2021, for the last more than 24 days they are lying in detention. It is settled law, that mere apprehension that petitioners/accused would temper with the prosecution evidence or intimidate the witnesses cannot be ground to refuse the bail unless the prosecution viz; respondent/CBI shows with substantial evidence that accused actually tried such tempering/

intimidation. The material witnesses in the case are the CBI officials and it is beyond comprehension that they would be influenced by petitioners/ accused. Arguments of Ld. Counsel for respondent/CBI that petitioners/accused would temper with the prosecution evidence or influence the witnesses appears to be conjectural and mere surmise.

(VII) Danger, of course, the justice being thwarted by grant of bail:-

In view of the plethora of judgments referred by Ld. Sr. Counsel for petitioners/ accused and ratios of the judgments deduced

27 Bail App Nos. 399 & 400 of 2021 therefrom, it can be safely held, that a balance has to be struck between the 'right to individual liberty ' and 'interest of the society '. The law as discussed above is no longer res-integra that while considering an application for grant or refusal of bail in non-bailable offence, concept of 'personal liberty ' as enshrined in Article-21 of the Constitution of India is of paramount importance and the general rule is that 'bail is rule ' and 'jail an exception '. Petitioners/accused are lying in detention for the last more than 24 days and presently are in judicial custody and are not required for the purpose of investigation any more. The fundamental postulate of criminal jurisprudence is that an accused is presumed to be innocent till guilt is proved against him. Keeping of petitioners/accused in continuous detention would amount to infringement of their fundamental right to life and liberty which would amount to their incarceration and inflicting pre-trial punishments which is against the mandate of criminal jurisprudence as punishment can only be inflicted after full flagged trial and after holding the accused guilty. In view of the aforesaid discussion, it is amply clear, that there would be no danger of the course of justice being thwarted if petitioners/accused are granted bails. Therefore, petitioners/ accused have carved out a strong case for grant of bails in their favour. The bails applications succeed and are allowed. Accordingly, petitioners/ accused are admitted to bails subject to their furnishing one surety bond each in the sums of Rs. 50,000/- to the satisfaction of Registrar Judicial this Court with furnishing of personal recognizance 's of like amounts before Superintendent District Jail, Ambphalla Jammu. Before parting, the following conditions are imposed upon the petitioners/accused;

(i) that the petitioners/accused shall not influence the prosecution witnesses or intimidate them or dissuade them from deposing before the court;

(ii) that the petitioners/accused shall appear before the trial court on each and every date of hearing during the trial except for special circumstances beyond their control;

(iii) that the petitioners/accused shall not leave the territorial jurisdiction of the trial court without seeking prior permission from it;

(iv) that in case respondent/CBI collects any material during the period the petitioners/accused are on bail that they are influencing the witnesses or have

tried to intimidate them the prosecution would be within their rights to move an application before this court for cancellation of their bails.

Disposed off accordingly.