

(2021) 02 J&K CK 0064

In the Jammu And Kashmir High Court

Case No : Bail Application No. 276 Of 2020, Criminal Miscellaneous No. 1849,
1850 Of 2020

Sajjad Ahmed

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 26-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 437, 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 20, 37

Citation : (2021) 02 J&K CK 0064

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Atul Raina, Jamrodh Singh

Final Decision : Allowed

Judgement

1. The instant application filed by the applicant under Section 439 of the Code of Criminal Procedure is for grant of bail to the applicant, arrested in

FIR No.137/2020 registered for offences under Sections 8/20 of Narcotics Psychotropic Substances Act, 1988 [â??NDPS Actâ??] at Police Station,

Katra.

2. As the prosecution story goes, on 02.09.2020, ASI Murad Ali, Incharge Police Post, Balani submitted a docket to Police Station, Katra that he along

with other police officials were conducting checking/frisking duty at the Nakka PCP Balani at about 1710 hrs, two persons came on a motorcycle

bearing registration No.JK02BD-8234 from Domail and were proceeding towards Reasi. When the duo reached the check-post, they tried to flee

away. The police party chased and over powered them. During preliminary enquiry, they disclosed their names as Mohd. Altaf and Sajad Ahmed

(applicant herein). During personal search, charas weighing 950 gms was recovered from the possession of applicant Sajad Ahmed and 495 gms from Mohd. Altaf. The investigation was entrusted to SI Suman Singh, who, during investigation visited the spot, prepared the site plan, seized/sealed the contraband, out of which 50 gms were taken out as sample and sent to FSL, Jammu for chemical analysis and expert opinion. The statements of the witnesses were recorded under Section 161 Cr.P.C. The report from the FSL was received and after completion of all legal formalities, final report in the case was presented before the competent Court of law on 02.11.2020. The other accused, namely, Mohd. Altaf, who was found in possession of 495 gms of charas, was found to be juvenile and, accordingly, separate proceedings were initiated before the Juvenile Justice Board, Reasi.

3. On the presentation of challan, the applicant, who was arrested on 02.09.2020 moved an application for grant of bail before the Principal Sessions Judge, Reasi [the Trial Court] and claimed concession of bail primarily on the ground that the applicant was allegedly found in possession of contraband weighing 950 gms approximately, which was an intermediate quantity, therefore, the rigors of Section 37 of NDPS Act were not applicable and the applicant was entitled to be considered for bail on the touchstone of principles governing grant of bail laid down under Section 437 Cr.P.C. The Trial Court considered the rival contentions and came to the conclusion that having regard to the heinousness of the offence, the applicant is involved in and its impact on the society, it was not advisable to let him off on bail and that there was serious apprehension of the applicant tampering with the evidence by influencing the prosecution witnesses. The application was, thus, dismissed by the Trial Court vide its order dated 19.12.2020.

4. Feeling aggrieved and in a bid to secure bail from the higher forum, the applicant has moved the instant application on the same grounds, as had been urged by him before the Trial Court.

5. The primary thrust of the arguments of learned counsel appearing for the applicant is that since the applicant was found in possession of the contraband (charas) weighing 950 gms, which is an intermediate quantity, as such, the rigors of Section 37 NDPS Act are not attracted. He having been in custody since 02.09.2020 is now entitled to bail, when the investigation

is complete and the challan stands presented in the competent Court of law. It is, thus, urged that with the completion of investigation and presentation of challan, the custody of the applicant is no more required and keeping the applicant in custody even after presentation of challan would be tantamount to inflicting pre-trial punishment on him.

6. The respondents have filed their objections. Apart from reiterating the prosecution story, it has been contended that the offence committed by the applicant is heinous and serious in nature and, therefore, the applicant does not deserve any leniency of bail from this Court. The offence committed by the applicant is against the society at large and entails severe punishment and, therefore, it is necessary to keep the applicant in jail during the course of trial, so that the confidence of the general public in administration of justice is restored.

7. Having heard learned counsel for the parties and perused the record, I am of the view that the applicant after having been in custody of the Police for more than five months deserves to be enlarged on bail.

8. The learned Trial Court has rejected the bail application being influenced primarily by the considerations, which may not be, too, germane for the disposal of the bail application. Undoubtedly, the menace of illegal trafficking in narcotics drugs and psychotropic substances has not only eaten the vitals of Indian economy but has destroyed the younger generation. The culprits, who are involved in transportation and distribution of this poison, are required to be dealt with iron hands. With a view to bring the real culprits to book, it is necessary that the investigating agency as also the prosecution perform its duties diligently, professionally and with utmost devotion, which we see missing in majority of cases. The investigation as well as the prosecution is conducted in most unprofessional manner, as a result whereof, many accused go scot-free after facing trial.

9. Be that as it may, these are not the considerations, which should prevail with the Court at the time of consideration of bail application(s). We must remember the golden principle of criminal jurisprudence, which is globally accepted, that an accused is presumed to be innocent until proven guilty. The accused can be proved guilty only in a trial conducted by a competent Court of Law. Arrest and detention of the accused during investigation or trial is not aimed at punishing the accused without trial or before the verdict of his

innocence or guilt, but is only to facilitate the proper investigation in the matter and to ensure that the trial is not influenced or hampered by the acts and omissions of the accused.

10. The offences under NDPS Act are viewed as heinous, grave and serious offences and they have been classified as per the quantity of the contraband found in possession of the accused. With regard to the commercial quantity, Section 37 of NDPS Act lays down rigorous conditions for grant of bail. However, with regard to intermediate and small quantity the bail application is required to be considered on the touchstone of the principles governing grant of bail under Section 437 Cr.P.C. At this juncture, I am reminded of the oft-repeated principle of criminal law that is:

“bail is rule and jail exception”.

11. When, facts of the instant case are examined on the touchstone of the legal principles governing grant of bail, it is seen that the applicant has been admittedly found to be in possession of the contraband of intermediate quantity. It is true that in cases where the accused is accused of possessing contraband of small or intermediate quantity, he is not entitled to bail as a matter of right. However, in the instant case, the applicant has been in the custody of the respondents since 02.09.2020. The investigation in the matter has been completed and the charge-sheet presented before the competent Court of law. The respondents do not require the applicant for the purpose of investigation anymore. The prosecution has not even voiced its apprehension that the applicant, if released on bail, may temper with or influence the prosecution witnesses. Simply because the offence allegedly committed by the applicant is serious in nature and has the potential of impacting the society at large cannot be a ground to refuse bail to the applicant. The respondents have not placed on record any material to indicate that the applicant is a repeat offender and has previously also committed the similar offence(s).

12. Learned counsel for the applicant has brought to my notice the judgments of this Court, wherein under similar set of circumstances, this Court has extended the benefit of concession of bail to the applicant(s) accused of being in possession of the contraband falling under intermediate quantity (Bail App No.168/2020 titled Raj Kumar v. UT of J&K, decided on 12.11.2020 and Bail App No.48/2020 titled Liaqat Hussain and others v. UT of J&K,

decided on 25.08.2020).

13. In view of the aforesaid, this application is allowed and the applicant is admitted to bail subject to the following conditions:-

- i) That the applicant shall furnish personal bond to the tune of Rs.50,000/- with one surety of the like amount to the satisfaction of the Trial Court.
- ii) That the applicant shall submit an undertaking that he shall regularly appear before the Trial Court on each and every date of hearing.
- iii) That the applicant shall not leave the territorial limits of the UT of J&K without prior permission of the learned Trial Court.
- iv) That the applicant shall not temper with or influence the prosecution witnesses or evidence in any manner during the trial.

Let a copy of this order be provided to learned counsel for the applicant and one copy be sent to the learned Trial Court.