

(2020) 12 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Bail Application No. 247 Of 2020, Criminal Miscellaneous No. 1562,
1563 Of 2020

Shahid Hussain Magray And Another

APPELLANT

Vs

Union Territory Of J&K

RESPONDENT

Date of Decision : 29-12-2020

Acts Referred:

Indian Penal Code, 1860 — Section 409, 468
Code Of Criminal Procedure, 1973 — Section 161
Constitution Of India, 1950 — Article 21

Citation : (2020) 12 J&K CK 0014

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : P. N. Raina, J. A. Hamal

Final Decision : Dismissed

Judgement

1. In the instant application/petition, the petitioners seek bail in anticipation of their arrest in case FIR No. 5/2020 punishable under Sections 468/409

IPC, (hereinafter for brevity, the FIR) registered at Police Station Marwah, District Kishtwar.

2. Before dealing with the instant bail application, it would be appropriate to briefly delineate hereunder the facts those stem out from

petition/application.:-

(a) The petitioners are stated to be working as contractual employees viz National Youth Corps (NYC) and Gram Rozgar Sewak (GRS) drawing the

wages as Rs. 2500/= and Rs. 6500/- respectively. Petitioner No. 1 is stated to be working in District Youth Services and Sports Department while as

petitioner No. 2 is stated to be working in Rural Development Department. Petitioner No. 1 is stated to be on temporary deputation to Rural

Development Department and posted at Panchayat Nowpachi-A while as petitioner No. 2 is stated to be posted at Panchayat Nowpachi-B.

(b) It is being stated that on the basis of some false and baseless report lodged by complainant-Sarpanchs, the FIR supra came to be registered with

sole ulterior motive to cause injury to the person and reputation of the petitioners.

(c) It is being next stated that while apprehending their arrest in the aforesaid FIR, the petitioners applied for grant of anticipatory bail before the court

of Principal Sessions Judge, Kishtwar which court while entertaining the same called for report from the respondents and upon consideration of the

same refused to grant the concession of bail vide order dated 19.11.2020.

(d) It is being further stated in the petition that Police Station Marwah, under the garb of aforesaid FIR is bent upon to effect the arrest of the

petitioners against the mandate of law without there being any involvement of the petitioners in the alleged accusation attributed against them and that

in case the petitioners are arrested same would amount to travesty of justice, amounting to their imprisonment before being held guilty.

3. Petitioners have urged following grounds in the petition which for convenience are extracted and reproduced here under: -

(i) That, petitioners are law abiding citizens. They are innocent and have been falsely implicated. Petitioners plead that the occurrence as alleged has

never happened. Petitioners have never committed any offence much less the offence alleged. Their arrest would result in violation of their right to life

guaranteed to them under Article 21 of the Constitution. On this ground only the petitioners are entitled for grant of anticipatory bail.

(ii) That, 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. 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 law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding the

society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute

adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the

sanctity of individual liberty. The allegations against the petitioners have been made with the sole object of injuring and humiliating the petitioner by

getting arrested in a false case. On this ground as well, the petitioner is entitled to grant of anticipatory bail.

(iii) That, 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. If the same is taken to be the only test or the factor it would not be balancing the constitutional rights but rather recalibration of the scales of

justice. The provisions of CRPC conferred discretionary jurisdiction on criminal court to grant bail to accused pending trial or in the appeal against

convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an

individual and the interest of the society in general. The reasoning adopted by the learned Principal Sessions Judge is a denial of the whole basis of our

system of law and normal rule of bail system. 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 preventive. 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

found guilty. From the earliest times, it was appreciated that the person in custody pending completion of trial could be a cause of great hardship. On

this ground as well petitioner is entitled to bail.

(iv) That petitioners reiterate that, they are innocent and have not committed any offence. They are the sole bread earners of their family. Their arrest

in this false case would result in losing their jobs and the same would practically lead their families to starve to death, further depriving them of their

right to livelihood. More so, in the backdrop of the fact, that, as per the police report submitted before the learned Principal Sessions Judge, nothing

substantial has been found till date against the petitioners in the investigation so far conducted, further coupled with the fact that, the complainants are

not coming forward to get their statements under section 161 CRPC even after more than one month has elapsed from the date of registration of FIR

as they know that petitioners have not committed any offence, petitioners deserve concession of bail. On this ground as well petitioners are entitled to grant of bail in anticipation of their arrest.

(v) That, petitioners crave leave of this Honâ??ble court to plead additional grounds taken hereinabove, as may be available to the petitioner in law at the time of hearing of the parties.

4. Per contra, respondents in the objections/report filed in opposition to the bail application have resisted and controverted the contentions raised and

grounds urged by the petitioners, wherein it is being stated that on 12.10.2020, the complainants viz (1) Shabrooza Nabi D/o Gh. Nabi Magray R/o

Nowpachi Marwah Sarpanch Panchayat Nowpachi-A, (2) Yasmeena Begum W/o Gh. Hussain R/o Qadarna Marwah Sarpanch Panchayat Qadarna-

A and (3) Mohd Abass Lone S/o Amber Lone R/o Yourdu Secretary Panchayat Nowpachi-A and Qadarna-A gave a written complaint to the Police

Station Marwah alleging therein that the petitioners have drawn an amount of Rs. 11,27,000/= on the name of Job Card Holders in Panchayat

Nowpachi-A and Rs. 10,36,000/= on the name of Job Card Holders in Panchayat Qadarna-A fraudulently. The said amount is stated to have been

deposited by the petitioners in the accounts of their relatives fraudulently and used for their personal interest causing great loss to the Government

Exchequer.

5. It is being further stated that the complainants came to know on 23.09.2020 about the aforesaid fraud committed by the petitioners while

withdrawing Government money illegally and fraudulently and the FIR came to be registered and investigation set into motion.

6. It is being stated that after getting list of so called beneficiaries in whose accounts the money has been transferred, the investigating agency

recorded the statements of VLW/Secretary Panchayat (complainants) and few of Job Card Holders. Information is also stated to have been obtained

from the various J&K Bank Branches wherein it had been informed by the BDO office that the transactions have been done in the said Branches.

Statements of various beneficiaries named in the objections are stated to have been recorded under Section 161 CrPC by the investigating agency

who are stated to have categorically said that the petitioners have duped the said beneficiaries by taking their ATM cards and deposited the

Government money as labour in their accounts and then withdrew the same by using their ATM cards.

7. It is being also stated in the objections that during the course of investigation the record and Bank Account Statements revealed that huge

transactions have been made by the petitioners in the name of their close relatives (both brothers of the petitioners) who upon investigation are stated

to have said that they have done the job for Rs. 15,000/- only.

8. It is being further stated that during the course of investigation one Amir Rasool S/o Gh. Rasool Danak R/o Nowpachi stated that he was taken by

the petitioners to Anantnag for withdrawal of extra money except his labour wages by using his ATM card on 16.09.2020 in District Anantnag.

9. It is being next stated that upon noticing the aforesaid bank transactions having been undertaken by the petitioners the whole record has been sent

for, from the area and same is likely to reach the Police Station, as the area is hilly and motorable road is closed on account of snow fall.

10. It is being also stated that statement of the complainant/VLW-Sarpanch has been recorded.

11. To sum up, the respondents have stated that investigation is at its infancy / preliminary stage and that the commission of crime by the petitioners is

exposed and manifest and that the arrest of the petitioners in the matter is warranted in order to unearth the acts of omission and commission

committed by the petitioners while working as public servants and that the grant of anticipatory bail at this stage to the petitioners will hamper the

investigation.

12. Heard learned counsel for the parties.

13. Before adverting to the issues involved in the petition, it would be appropriate and advantageous to refer here under few judgments of Honâ??ble

Apex court, relating to the subject bail/anticipatory bail and issues connected thereto being relevant and germane herein. In â??Anil Kumar Yadav

Vs. State (NCT of Delhi) and Anr., reported in 2018 (12) SCC 129â??, at Para 15, it has been noticed as under: -

15. â??As held in Puran case [2001(6) SCC 338], while considering the question of grant of bail, court should avoid consideration of details of

evidence as it is not a relevant consideration. While it is necessary to consider the prima facie case, an exhaustive exploration of the merits of the case

should be avoided. We, therefore, consciously refrain from considering the merits of the materials/ evidence collected by the prosecution.â??

In the latest judgement of Apex Court passed in case titled as â??Dr. Naresh Kumar Mangla vs. Smt. Anita Agarwal & Ors., Etc.â? in Criminal

Appeal Nos. 872-873 of 2020, arising out of SLP (Crl.) Nos. 4935-4936 of 2020, at para 17, it has been noticed as under: -

â??17. In the recent decision of the Constitution bench in Sushila Aggarwal vs. State (NCT of Delhi), the considerations which ought to weight with

the Court in deciding an application for the grant of anticipatory bail have been reiterated. The final conclusions of the Court indicate that:

â??92.1â?|.The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably

apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or

apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed.

92.3â?|.While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the

likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such

as leaving the country), etc.

92.4 Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the

facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether

and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the

court.â??

14. Considering the instant petition on the above scales and in the backdrop of the objections/report filed by the respondents, the petitioners prima facie

seemingly are involved in the commission of serious offences under Sections 468 /409 IPC .The petitioners appear to be involved in the commission of

offences in question while employing illegal means qua public money taking advantage of their being public servants. The contentions urged by the

petitioners in the petition/ application that they never committed any offence

much less the offences alleged and that they have been falsely implicated in the case can neither be looked into by this Court at this stage unless the investigation of the case is completed by the investigating agency nor can be the said contention of the petitioners of innocence taken to be as a gospel truth at this stage.

15. The nature and gravity of accusation coupled with the role of the petitioners in the commission of alleged offences more particularly in the light of complaint filed by the complainants inasmuch as the statements of the witnesses recorded by the investigating agency cannot be at this stage discarded while considering the instant bail application. The investigating agency admittedly is yet to collect the documentary evidence in the matter on account of closure of the motorable road connectivity in the area, therefore, granting of bail in anticipation of arrest at this stage of the investigation in favour of the petitioners is likely to affect the investigation of the case while allowing the petitioners a free hand to tamper with the evidence (including intimidating witnesses being poor labourers) collected so far or that may be collected hereafter by the investigating agency inasmuch as, also in the process of likelihood of the petitioners influencing the course of investigation.

16. In view of the gravity and seriousness of the alleged offences committed by the petitioners, the role of the petitioners therein, the likelihood of their influencing the course of investigation inasmuch as, the infancy stage of investigation, the petitioners are held not entitled to grant of bail in anticipation of their arrest at this stage. Accordingly, instant application is dismissed.

17. Dismissed along with connected CrIM(s)

18. It is however made clear that any observation made hereinabove shall not be construed to be expression of any opinion about the guilt or otherwise of the petitioners in the case.