
(2020) 10 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : Bail Application No. 160 Of 2020

Surjeet Singh

APPELLANT

Vs

Union Territory Of J&K

RESPONDENT

Date of Decision : 06-10-2020

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 37

Citation : (2020) 10 J&K CK 0013

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Parkhi Parihar, Ayjaz Lone

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. The applicant is seeking bail in FIR bearing No. 112/2020 registered with Police Station, Samba for commission of offences u/s 8 and 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the NDPS Act). The applicant earlier also had filed bail application bearing BA No. 70/2020 but as the challan was filed during the pendency of said bail application, the applicant was granted liberty to approach the trial court for grant of bail and the said bail application was disposed of accordingly. Thereafter, the applicant approached the trial court, however, the learned Sessions Judge, Samba vide order dated 25.08.2020 dismissed the said application. After dismissal of the bail application by the trial Court, the present application has been filed by the applicant.

2. The allegations against the applicant are that on 06.05.2020, during checking at 18.30 hours at Naka point near Sidco Chowk, National Highway, Samba signal was given to one Gas Tanker that was coming from Srinagar towards Samba but the said Tanker did not stop at the said naka and then Head Constable Pawan Kumar along with other police officials chased the said Tanker and stopped the said Tanker at some distance from Naka point. During checking of the said

Tanker and on suspicion, the police called one tyre mechanic, namely, Vijay Singh on spot and spare tyre was opened by the said mechanic. 13 polythene bags having approximately one kg of Poppy Straw each were recovered from the tyre. Total recovery that was effected from the applicant was approximately 13 kg of Poppy Straw. It is submitted in the bail application that a false and frivolous FIR was registered against the applicant as the applicant has not committed any offence and also that the applicant is a sole bread earner of the family and also that the trial has not commenced because of the limited functioning of the courts.

3. The respondent was put to notice and detailed objections stand filed. The respondent has mainly objected the bail application on the ground that the offence so committed is very heinous and is against the society and the menace of drug abuse, drug addiction and drug trafficking has touched the alarming situation in the society so the applicant does not deserve to be enlarged on bail.

4. The learned counsel for the applicant has vehemently argued that the contraband allegedly recovered from the applicant falls within the intermediate quantity and he has been in the custody for the last many months and more so, as the challan stands filed against the applicant the presence of the applicant is not required during investigation but only for the purpose of trial.

5. Per contra, the learned Dy. A.G, has argued that the applicant is involved in the commission of heinous offence so he is not entitled to bail particularly in view of rising menace of drug addiction and trafficking. As also the applicant is resident of Punjab so there is every likelihood of the applicant jumping over the bail.

6. Heard and considered.

7. This is not in dispute that quantity of alleged contraband is 13 kg of Poppy Straw and the said contraband falls within category of the intermediate category, therefore, rigors of section 37 shall not apply. The challan is sub-judice before the learned Sessions Judge, Samba but the proceedings have not commenced because of the restricted functioning of the courts and also the conclusion of the trial is not possible in near future. The presence of the applicant is required only during the trial. The respondent has not placed anything on record that the applicant is a habitual offender and is involved in similar type of offences. The allegations against the applicant are subject to proof during the trial. So far as the contention of learned counsel for the applicant that the applicant is an outsider, that can be taken care of by directing the applicant to produce two solvent sureties for securing his presence during the trial and also he shall inform the concerned SHO about his location on the very first date of every month

8. Taking into consideration that the quantity of the contraband falls within the category of intermediate quantity and also the prosecution has yet to lead evidence and there is no likelihood of completion of trial in near future, this Court is of the considered opinion that the applicant deserves to be enlarged on bail.

9. For all what has been discussed above, this application is allowed.

The applicant is enlarged on bail on the following conditions:

(i) subject to furnishing of two local solvent sureties to the tune of Rs.

50,000/- each to the satisfaction of the trial court.

(ii) he shall furnish an undertaking that he shall intimate his whereabouts to the concerned SHO on the 1st day of every month.

(iii) he shall not contact with any of the prosecution witnesses during the trial and shall regularly appear before the trial court.

10. In the event of violation of any of the conditions mentioned above, the respondent can lay a motion for cancellation of bail of the applicant before the trial court.

11. Disposed of accordingly.