

(2020) 03 J&K CK 0058

In the Jammu And Kashmir High Court

Case No : Bail Application No. 32 Of 2020, Criminal Miscellaneous No. 290 Of 2020

Syed Shakeel Ur Rehman

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 24-03-2020

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120(B), 420, 467, 468, 471

Jammu And Kashmir Prevention Of Corruption Act, 2006 — Section 5(2)

Code Of Criminal Procedure, 1973 — Section 497

Citation : (2020) 03 J&K CK 0058

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Sunil Sethi, Navyug Sethi, Raman Sharma

Final Decision : Allowed

Judgement

Sindhu Sharma, J

1. Applicant was arrested in FIR No. 74/2016 registered with Police Station, Crime Branch, Jammu for commission of offence under section 420, 467, 468, 471 and 120-B read with section 5(2) of J&K Prevention of Corruption Act Samwat 2006.

2. On a written complaint alleging that Secretary, J&K Academy of Art, Culture and Languages (JKAACL) in connivance with other members of the Selection Committee has selected petitioner as Publicity-cum-Public Relations Officer illegally and in violation of the rules, by misusing their official position. FIR No. 74/2016 under section 420, 467, 468, 471, 120-B RPC under section 5(2) was registered in 2016. It was also alleged, that alteration was made vide order No. 57/2009 and they inserted word "experience" and post was advertised without approval by changing the essential qualification. The accused was arrested on 19.02.2020 and is presently lodged in District Jail Ambphalla w.e.f 22.02.2020

his judicial remand was extended till 17.03.2020.

3. Learned counsel for the applicant submits that the complainant has filed a complaint in order to seek promotion over and above him. Thus, a false and frivolous complaint has been filed after 7 years of his selection and appointment. It is further submitted that after the registration of FIR No. 74/2016, applicant has fully cooperated with investigation. He has also submitted his detailed reply to the questionnaire given to him 01.02.2018. The investigation in the aforesaid FIR was pending for the last 4 years, and he was arrested only on 19.02.2020.

4. Mr. Raman Sharma, learned AAG submits that since applicant is convicted in a case of corruption under section 5(2) as there is every likelihood of his tampering with evidence, therefore, he may not be admitted to bail.

5. Heard learned counsel for the parties.

6. The trial court vide order dated 27.02.2020 rejected the bail application on the ground that allegations are against the accused are very serious considering the manner in which appointments were made.

7. The FIR was registered in the year 2016 during the entire period of investigation which was spread over 4 years. The applicant was not arrested by the investigating agency. He was arrested only on 19.02.2020. It appears that the applicant has been cooperating with the respondents during this period. He has also placed on record a questionnaire given to him by the respondents which was duly replied by him, these submissions have not been rebutted by the other side. It is not necessary to go into the correctness or otherwise of the allegation made at this stage, which would be dealt by the trial Court.

8. In Sanjay Chandra v. CBI, 2012 (1) SCC 40, Hon'ble the Supreme Court has held that:

"(22) More recently, in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, this Court has observed that "(j) just as liberty is previous to an individual, so is the society interest in maintenance of peace, law and order. Both are equally important. "This Court further observed that:

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."

23 The principles, which the Court must consider while granting or declining bail, have been culled out by this Court in the case of Prahlad Singh Bhati V. NCT, Delhi, (2001) 4 SCC 280, thus:

"The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means

and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of security the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be bail to produce pima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

9. In case titled Mohd. Razak and another v. State of J&K and another reported as, 2007(2) JKJ 2016, this court held as under:

"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. In view of the aforesaid this petition is allowed. applicant is directed to be released from custody on furnishing of personal bond as well as surety bond each to the amount of Rs. 25,000/- subject to the conditions that he shall make himself available for the investigation as and when required, he shall not come in contact with the prosecution witness directly or indirectly and he shall not leave the Union Territory of Jammu and Kashmir, without previous permission of this Court.

11. Considering the present circumstance, the copy of this order as downloaded from the internet (e-court of this Court) shall be considered as certified copy.