

(2022) 03 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : Bail Application No. 45 Of 2021

Zahoor Ahmad Bhat

APPELLANT

Vs

UT Of JK And Others

RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 34, 201, 302, 364
Code Of Criminal Procedure, 1973 — Section 164A

Citation : (2022) 03 J&K CK 0004

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : Sheikh Hilal, Asifa Padroo

Final Decision : Dismissed

Judgement

Javed Iqbal Wani, J

1. The petitioner is facing trial in the court of Principal Sessions Judge, Anantnag (for short" Trial court"), and has moved the instant application for grant of bail after having being charged on 02.3.2020 under Section 302, 34, 201 RPC along with other accused persons. The instant application for bail is filed as a second attempt after an unsuccessful attempt was made by the petitioner herein before the Trial Court upon moving a bail application on 08.03.2021 having been dismissed on 09.04.2021.

2. The background facts upon which prosecution case has been set up is that on 10.10.2019, some unknown auto driver dropped one Mohammad Akram Sheikh S/o Gh. Hassan Sheikh R/O Assus, Telwani at his home in a critical condition and whereafter, he was shifted to District Hospital Anantnag and then to SKIMS, Soura, Srinagar for treatment where he breathed his last and that the said Mohammad Akram Sheikh had been beaten ruthlessly by unknown persons at some unknown place with intention to kill him and thereafter left him on the way in a critical condition and on receipt of this information case FIR no. 58/2019

under Section 302 RPC was registered in police Station Achabal and investigation set into motion and during the course of investigation statement of witnesses was recorded and that the statement of injured could not be recorded on account of his being in unconscious state of mind and that during the course of investigation it got revealed that the deceased have had illicit affairs with one Mst. Ishrat Jan wife of Bilal Ahmad Bhat R/O Lalipora, Kulgam and that the deceased and the said lady had gone to the house of one Attiqah Begum in village Sucjh, Kulgam, where they came to be spotted by the husband of the lady namely Bilal Ahmad Bhat and that thereafter the trio went to the parental home of Ishrat Jan and Bilal Ahmad Bhat accused took the deceased in a paddy field of Lalipora, Mir Bazar, where accused Bilal Ahmad Bhat, Abdul Salam Bhat and Zahoor Ahmad Bhat beat the deceased mercilessly with the aim and intention to kill him for having illicit relations with the wife of main accused Bilal Ahmad Bhat, but fearing his death the accused took the deceased in an auto rikshaw and dropped him at his residence at Asho, Tilwara and that from the evidence collected during the course of investigation offences under Section 364, 302, 34, 201 RPC were prima facie established against the accused persons and consequently a challan came to be filed before the court of law. Charges have been framed against the petitioner/accused with the other accused persons on 02.03.2020 for commission of offences under Section 302, 34, 201 RPC and that the prosecution has listed 36 witnesses and out of which 03 witnesses have appeared in the witness box before the Trial court.

3. The petitioner seeks bail in the instant application on the premises that going by the statements of the witnesses examined so far, nothing incriminating has been said against the petitioner/accused and that there is a prima facie case in favour of the petitioner for grant of bail in view of the statement of the witnesses recorded under Section 164-A and that the witnesses so far recorded before the court below clearly create doubt in the prosecution story, thus entitle the petitioner to the bail and that pre-trial conviction is grave and the petitioner/accused is presumed to be innocent unless held guilty and that in the event bail is granted to the petitioner, he shall abide by the conditions those may be imposed by the court.

4. Per contra, respondents have filed objections to the bail application, and therein the bail application is being resisted and opposed inter alia on the grounds that the trial is at its infancy stage and that admitting the petitioner/accused to bail would cause grave prejudice as there are reasonable grounds and evidence for believing that the accused/petitioner has committed heinous offence and that in the event bail is granted, the petitioner/accused will flee and jump over the bail inasmuch as may hamper the prosecution evidence and the witnesses thereof which may result the vitiating the whole trial of the case.

5. Heard learned counsel for the parties and peruse the record on file.

6. Learned appearing counsel for the parties while making their respective submissions reiterated the contentions raised in their respective pleadings.

7. Before adverting to the rival submissions of appearing counsel for the parties it becomes imperative to refer to the law laid down by the Apex Court from time to time on the subject of bail and issues connected thereto. The Apex Court in case titled "Neeru yadav Vs. State of Uttar Pradesh and Another", reported in 2014 (16) SCC 508, has been laid down at para 9, 10 and 16 as under:-

"9. In this context a fruitful reference be made to the pronouncement in Ram Govind Upadhyay V. Sudershan Singh, wherein, this court has observed that grant of bail though discretionary in nature, yet such exercise cannot be arbitrary, capricious and injudicious, for the heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependent on the factual matrix of the matter. In the said decision, reference was made to Prahlad Singh Bhati v. NCT of Delhi and the court opined thus: (Sudarshan Singh case, SCC p. 602, para 4).

(a) "While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail"

"10. In Chaman Lal v. State of U.P. the court has laid down certain factors, namely, the nature of accusation, severity of punishment in case of conviction and the character of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and prima facie satisfaction of the court in support of the charge, which are to be kept in mind."

"16. The issue that is presented before us is whether this court can annul the order passed by the High Court and curtail the liberty of the second respondent?. We are not oblivious of the fact that liberty is a priceless treasure for a human being. It is founded on the bedrock of the constitutional right and accentuated further on the human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilization

rests. It cannot be allowed to be paralyzed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic polity which is wedded to the rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the society. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At this stage, the court has duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. Further a reference to the judgment of the Apex Court passed in "Anil Kumar Yadav Vs. State (NCT of Delhi)", reported in 2018 (12) SCC 129, would be appropriate and relevant herein wherein at para 17 and 18 following has been provided:-

"17. While granting bail, the relevant considerations are:- (i) nature of seriousness of the offence: (ii) character of the evidence and circumstances which are peculiar to the accused: and (iii) likelihood of the accused fleeing from justice: (iv) the impact that his release may make on the prosecution witnesses,, its impact on the society: and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard and fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court."

"18. While considering the basic requirements for grant of bail, in State of U.P. through CBI v. Amarmani Tripathi, this Court has held as under:-

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence: (ii) nature and gravity of the 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, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT of Delhi and Gurcharan Singh v. State (NCT of Delhi). While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.

We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. Rajesh Ranjan*.

11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are: (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; (c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh* and *Puran v. Rambilas*.”

8. With the aforesaid legal position in mind, the instant bail application may be considered.

9. The grounds urged by the petitioner/accused in the bail application is based on the contention that there is no direct or incriminating evidence so far against the petitioner/accused that has come before the Trial court implicating the petitioner/accused in the commission of the alleged offences. However, perusal of the record and the chain of events as would emerge from the prosecution case, at this stage, prima facie suggest that the accused/petitioner is connected with the commission of offences. The general contentions and grounds urged by the accused/petitioner that he did not commit offence and that there is no direct evidence or that no incriminating evidence has come before the Trial court so far connecting the accused/petitioner with the commission of offences cannot alone be taken into account at this stage, in view of the admitted fact that the majority of the listed witnesses of the prosecution are yet to appear in the witness box coupled with the fact that the petitioner/accused is involved in the commission of a heinous offence. As has been noticed in the preceding paras the law is settled by the Apex Court that while considering a bail application nature of accusation, severity of punishment in case of conviction and nature of supporting evidence as also reasonable apprehension of tempering with the witness or apprehension of threat to the complainant have had to be considered before grant of bail.

10. Besides the aforesaid principles an excerpt from the judgment of the Apex Court passed in *Neeru Yadav* supra case at the cost of risking repetition requires to be extracted and reproduced hereunder being relevant and germane hereto having regard to the peculiar facts and circumstances of the case and in respect of the question of liberty of an individual as against the norms of the society. The excerpt reads as under:

"A society expects responsibility and accountability from its members, and it desire that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious matter ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At this stage, the court has duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."

11. For what has been considered observed and analyzed hereinabove, the petitioner/accused is not held entitled to bail at this stage, as such the instant bail application merits dismissal and is accordingly dismissed.

12. It is made clear that nothing hereinabove shall be construed to be expression of any opinion about the guilt or innocence of the petitioner as the same will be decided by the Trial court on its own merits after analyzing the evidence that surfaces on record during the Trial of the case.