

Ramneek Singh Th. Amrinder Pal vs Ut Of J&K on 31 May, 2022

Author: Javed Iqbal Wani

Bench: Javed Iqbal Wani

Serial No. 74

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Bail App. No. 167/2022

Ramneek Singh Th. Amrinder Pal
Singh

...Appellant(s)/Petitioner(s)

Through:- Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhimanyu Sharma, Advocate

v/s

UT of J&K

...Respondent(s)

Through:- Ms. Monika Kohli, Advocate

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

1. The petitioner herein through the medium of the instant petition seeks bail in FIR No. RC0042022A0006 dated 29.04.2022, registered with CBI, ACB Jammu under Section 7 of the Prevention of Corruption Act, 1988.

2. According to the learned counsel for the petitioner, the petitioner herein while serving as commercial tax officer and posted at Kathua came to be arrested by the respondent herein on 29.04.2022 on the basis of a complaint lodged by one Sh. Keshav Mahajan S/o Sat Pal Gupta R/o W.No. 16 Shiva Nagar, Near BRS Kids School, Kathua, who had alleged in the complaint that the petitioner herein had demanded a bribe of Rs. 15,000/- for processing his application for refund of excess balance in electronic cash register and also for registration of his new firm.

3. According to the learned counsel, prior to the filing of the instant bail application, the petitioner filed a bail application before the Court of Special Judge, Anti-Corruption (CBI cases), Jammu on 30.04.2022, which application, however, came to be dismissed on 05.05.2022 on the ground that

the investigation is at the early stage and that the statement of the material witnesses of pre-trap and post-trap proceedings have not been recorded and that, as such, there is every possibility of the petitioner herein hampering the investigation.

4. According to the learned counsel, the investigation in the case being an offence committed by the petitioner under Section 7 of the Prevention of Corruption Act, 1988 is complete as soon as the trap proceedings are concluded and, as such, the detention of the petitioner after completion of trap proceedings would amount to pre-trial conviction which is not being countenanced by law.

5. According to the learned counsel for the petitioner, the petitioner undertakes to abide by any of the terms and conditions those may be imposed by this court in case, the petitioner is admitted to bail. Moreso, in view of the fact that only one day's remand was sought by the prosecution from the competent Court for the custody of the petitioner herein.

6. Objections to the petition have been filed by the respondent herein wherein it is being stated that the petitioner herein came to be caught red handed while demanding and accepting a bribe of Rs. 13,000/- from the complainant in presence of independent witnesses on 29.04.2022.

7. It is being further stated that the petitioner was taken into custody after following a legal procedure and was produced before the Court on 30.04.2022, whereafter was remanded to judicial custody. The bail application is being opposed, inter-alia, on the ground that the petitioner has committed a heinous offence and that the investigation in the case is at initial stage and that the petitioner being an influential officer, there is every likelihood that if he would be released on bail, he would tamper with the evidence and influence the witnesses.

Heard learned counsel for the parties and perused the record.

8. Before advertng to the rival submissions of the appearing counsel for the parties, it would be advantageous and appropriate to refer to the principles of law laid down by the Apex Court from time to time in the matter relating to bail. The Apex Court in case titled as "Sanjay Chandra vs. Central Bureau of Investigation, reported in 2012 (1) SCC 40", laid down as follows:-

"21. 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 preventative. 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 duly found guilty."

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un- convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of

personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

24. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is 'the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, 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 : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice."

25. The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.

34. More recently, in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, this Court observed that "(j)ust as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important."

35. This Court further observed : "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." This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused [See Babba v. State of Maharashtra, (2005) 11 SCC 569, Vivek Kumar v. State of U.P., (2000) 9 SCC 443, Mahesh Kumar Bhawsinghka v. State of Delhi.]

9. A Co-ordinate Bench of this Court in case titled Mohd. Razak and another vs. State of J&K and another, reported in 2007 Supreme (J&K) 48 has laid as follows:-

"8. So long as there were no such Special provisions in force providing severe punishment and stringent provisions regarding bail during investigation and trial of cases under the Prevention of Corruption Act and such like other Laws, persons accused of offences under the Prevention of Corruption Act, 2006, cannot, in my opinion, be treated differently to deny them consideration for bail during investigation and trial merely because they were alleged to be involved for infraction of offences under the Prevention of Corruption Act, 2006.

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. Keeping in mind the aforesaid principles of law and reverting back to the facts of the case in hand, admittedly the petitioner has been arrested on 29.04.2022 by the respondent on account of having allegedly demanding and receiving bribe from the complainant during a trap laid by the respondent at the instance of the said complainant.

11. The fundamental objections raised by the respondent in opposition to the application is that the petitioner is an influential officer in the States Taxes Department and that there is every likelihood if released on bail would tamper with the evidence and influence with the witnesses. No instance has been referred to or relied upon by the respondent in the objections that the petitioner has a background that he would either influence the prosecution or tamper with the evidence. The contention, ex-facie, is speculative without any substantial material thereon. Admittedly, the main witness in the prosecution case is the complainant and that there is no apprehension expressed by the respondent that there is every likelihood that the petitioner would flee from the process of law or tamper with the evidence which indisputably is substantive in nature.

12. Law is settled that the consequence of a pre-trial detention would be grave as in law an accused is presumed to be innocent till proven guilty.

13. Having regard to the aforesaid facts and circumstances of the case and principles of law, it is manifest that there is no danger to the course of the justice at the hands of the petitioner, so much so, there is no likelihood supported with any material on record by the respondent that the petitioner if enlarged on bail would repeat the offence or else would tamper with the evidence or influence the witnesses.

14. For all what has been observed, considered and analyzed herein above, the petitioner has been able to carve out a case for indulgence of this Court and consequent grant of bail. Accordingly, application is allowed and petitioner is admitted to bail subject to the following conditions :-

i. Furnishing of a surety bond to the tune of Rs. 1.00 lac with two sureties of the like amount to be furnished before Superintendent of District Jail, Amphalla, Jammu ;

ii. That the petitioner/accused shall not influence the prosecution witnesses or intimidate them or dissuade them from deposing before the court ;

iii. That the petitioner/accused shall appear before the trial court on each and every date of hearing during the trial except for special circumstances beyond their control ;

iv. That the petitioner/accused shall not leave the territorial jurisdiction of the trial court without seeking prior permission ;

v. That in case respondent/CBI collects any material during the period the petitioner/accused is on bail that he is influencing the witnesses or has tried to intimidate them the prosecution would be within their rights to move an application before this court for cancellation of the bail.

vi. That he shall surrender his passport with the investigating agency.

15. Application is accordingly, disposed of.

(JAVED IQBAL WANI) JUDGE Jammu 31.05.2022.

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