

S. No.

Supp Cause List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 21.05.2022
Pronounced on: 29.06.2022

Bail App No. 113/2021

Amit Kumar Gupta

...Petitioner(s)

Through: Mr. Murtaza A. Khan, Advocate.

Vs.

UT of Jammu and Kashmir through SHO PS Mendhar ...Respondent(s)

Through: Mr. Adrash Bhagat, GA.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE
JUDGEMENT

1. The present petition has been filed by the petitioner seeking bail in anticipation of his arrest in FIR No. 45/2020 registered with Police Station Mendhar for offences punishable under Section 304/34 IPC.
2. According to the prosecution version, on 03.01.2019 an information was received on telephone at Police Station Mendhar that the body of one Imran Ahmed S/o Mohd Razaq R/o Ari Mendhar Poonch, is lying at SDH Mendhar having died in mysterious circumstances requiring initiation of inquest proceedings in order to ascertain the cause of death, whereupon inquest proceedings were initiated under DDR No. 06 dated 03.01.2019 at Police Station Mendhar and after conducting inquest proceedings including post-mortem of dead body and recording of the statements of witnesses under Section 175 CrPC the

dead body of the deceased was handed over to his legal heirs for last rites.

3. According to the prosecution version, a SIT came to be constituted on 21.01.2019 and upon taking over the investigation of the matter, Investigating Officer seized the CD file of the inquest proceedings of the deceased along with the documents consisting of site plan, memo and statements of the witnesses and case diaries etc and besides sending the mobile phone of the deceased to CFSL Pune for expert opinion and according to post-mortem, FSL report and statements of the witnesses suggested that the deceased had financial dispute with the accused petitioner herein Amit Kumar Gupta and that the petitioner along with one Mohd Shakeel alias Bolla S/o Mohd Majeed with common and criminal intention give over doze of drug to the deceased resulting into his death as per the FSL and medical report establishing commission of offences under Sections 304/34 IPC by the accused/petitioner, whereafter the charge sheet was laid before the competent court on 06.02.2021.
4. According to the prosecution version, the accused Shakeel Ahmed alias Bolla was taken into custody, whereas, the accused/petitioner had been absconding and evading his arrest resulting into issuance of general warrant of arrest against the petitioner herein after the presentation of challan before the competent court.
5. It is being contended in the instant petition that the petitioner has been falsely implicated in the case having resulted from a highly unfair, shady, motivated and inconclusive inquest proceedings.

6. It is being further stated in the petition that respondent has presented challan against the accused/petitioner and the co-accused Shakeel Ahmed on the basis of flimsy, concocted and manipulated evidence. The petitioner claims to be an innocent having not committed any offence and having no criminal track record.
7. It is being next stated that the petitioner is a grocery retailer and is a member of respectable and law abiding family and that police are hell bent to arrest the accused/petitioner in execution of general warrant of arrest issued by the Sessions judge Poonch.
8. It is being further stated that petitioner has called in question FIR supra and the final report laid under Section 173 CrPC as also the process issued thereupon by the trial court.
9. **Per contra**, objections have been filed by the respondent to the instant petition wherein petition is being resisted and controverted *inter-alia* on the grounds that the accused/petitioner is involved in the commission of a heinous offence and that the petitioner has been evading arrest since long.

Heard and considered the rival submissions made by appearing counsel for the parties and also perused the record.

10. The accused/petitioner is alleged to have committed the offences punishable under Section 304 IPC which provides and reads as under:

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“304. Punishment for culpable homicide not amounting to murder._ Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment for either

description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause injury.”

11. What emerges from above is that Section 304 IPC, Part-I applies to a case where act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death and Part-II thereof applies when it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.
12. Before advertng to the question as to whether the petitioner is entitled to the concession of bail in anticipation of his arrest, it becomes imperative in the first instance to refer to law laid down by the Apex court on the subject of bail/anticipatory bail and issues connected thereto. Apex court in case tilted as **“Naresh Kumar Mangla Vs. Anita Agarwal”** reported in 2020 SCC online SC 1031, has laid down as follows:

“92.1.... 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.

92.3....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.....Court sought 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.

Further the Apex court in case titled as “**Anil Kumar Yadav Vs. State (NCT of Delhi) and Anr., reported in 2018 (12) SCC 129**”, has noticed at Para 15, following:-

15. “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.”

13. Admittedly, (the deceased) a young person has died which death of the deceased is attributed to the accused/petitioner and his co-accused namely Shakeel Ahmed alias Bolla. *Prima-facie* there is material on record connecting the accused/petitioner herein with the commission of alleged offence which cannot be overlooked or ignored by this court while dealing with the instant bail application. A general contention of the petitioner that he did not commit any offence and is innocent cannot *per-se* discredit or discard either the investigation conducted or else evidence on record collected during the course of the investigation.
14. It is settled position of law that this court can neither go into the evidence in such a depth to ascertain the probability of conviction of the accused/petitioner, nor can it be said at this stage that the case foisted against the petitioner, is totally false, in that, the detailed examination of evidence and elaborate documentation of the merits of the case cannot be undertaken, while considering a bail application. This court also cannot remain oblivious of the fact that the accused/petitioner is absconding and proceedings in this regard have been initiated against him by the trial court.
15. It is significant to mention here that the provisions of Section 438 CrPC which provide for direction for grant of bail to person apprehending arrest, is an extraordinary power vested in this court and it has to be exercised only in exceptional cases where it appears that person may be falsely implicated or there are reasonable grounds for

holding that a person accused of an offence is not likely otherwise to misuse his liberty.

16. From the perusal of the record, it is clear that petitioner though initially had got associated with the inquest proceedings in the matter yet subsequently remained unavailable during the course of investigation and the position remains same uptill the filing of challan and commencement of trial as well. It is also an admitted fact that a general warrant of arrest has been issued against the petitioner herein. It is a consistent view of the courts that a person against whom a warrant who is absconding and evading the execution of a warrant, is not entitled to the concession of anticipatory bail. A reference in this regard to the judgement of the Apex court passed in the case titled as **“Prem Shankar Prasad V. State of Bihar and Anr.”**, reported in **2021 Cri.L.R. (SC) 1538**, would be relevant, wherein following has been noticed:

“.....Normally, when the accused is ‘absconding’ and declared as a ‘proclaimed offender’, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

17. Viewed in the context what has been observed, considered and discussed above, the instant petition entails dismissal and is, accordingly **dismissed**.
18. It is made clear that nothing hereinabove shall be construed to be expression of any opinion about the guilt or innocence of the accused petitioner herein.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

29.06.2022

"Ishaq"

Whether approved for reporting ? Yes/No

