

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Bail App No. 138/2021

CrlM No. 1302/2021

Rayees Ahmad Khan

.....Petitioner(s)

Through: Mr. Umar Mir, Adv.

V/s

Union Territory through P/S Kupwara

..... Respondent(s)

Through: Mr. Asif, Dy. AG.

CORAM:**Hon'ble Mr. Justice Sanjay Dhar, Judge.**

ORDER

29.11.2021

01. The petitioner is invoking jurisdiction of this Court under Section 438 Cr. P.C seeking bail in anticipation of his arrest in FIR No. 37/2018 for offence under Section 13 of ULAPA and Section 67 IT Act of Police Station, Baramulla.

02. A perusal of the application reveals that before invoking jurisdiction of this Court, the petitioner has not exhausted the remedy of making an application for grant of anticipatory bail before the Special Court concerned. It is averred in the application that the petitioner could not avail the remedy of anticipatory bail before the Designated Court of Additional Sessions Judge, Baramulla because the police has kept a watch on the main gate of that court and the petitioner is apprehending arrest over there.

03. Although, Section 438 Cr. P.C gives concurrent jurisdiction to High Court and Sessions Court to consider a bail application of an accused yet, as a matter of ordinary practice, High Court does not entertain application of a person under Section 438 Cr. P. C unless the said person has

approached and exhausted the remedy before the Court of first instance. It is only in exception cases and in special circumstances that the High Court may entertain an application under Section 438 of Cr. P. C without insisting upon filing of such application before the court of Sessions in the first instance. Reference can be made to the judgment of the Karnataka High Court in case titled Smt. Savitri Samsa Vs. State of Karnataka, 2001 CriLJ 3164, judgment of Madhya Pradesh High Court in the case titled Smt. Manisha Neema Vs. State of M. P, 2003(2) MPLJ 587 and the judgment of the Delhi High Court in case titled Gopal Goyal Vs. State of NCT of Delhi (Bail Application No. 1565/2012 decided on 19th November, 2012). The aforesaid ratio has been followed by this Court in the judgment passed in Bail App. No. 93/2021 titled Khurshid Ahmad Khanna Vs. U. T of J&K decided on 06.10.2021.

04. In view of what has been discussed hereinabove, it is clear that unless there are compelling and exceptional circumstances, the petitioner, without actually exhausting the remedy of filing of bail application before the court of first instance, cannot invoke the jurisdiction of this Court. In the instant case, the petitioner has not disclosed any compelling or special circumstances. The only contention of the petitioner is that he is apprehending his arrest at Baramulla as the police is keeping watch over there. Petitioner is seeking bail in anticipation of his arrest, as such, he has physically surrendered himself before the court at the time of filing of the application. The contention that he is apprehending arrest in the Court Complex at Baramulla is without any substance as he is not required to physically attend the court.

05. For the foregoing reasons, without expressing any opinion on the merits of the case, the application is dismissed with liberty to the petitioner to approach the court of first instance.

(Sanjay Dhar)
Judge

SRINAGAR

29.11.2021

"Aasif"

