

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

Pronounced on : 24.02.2021

Bail App No.223/2020
CrlM No. 1347/2020

Amrit Pal SinghApplicant

Through :- Mr. K.S.Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

v/s

Union Territory of J&K and anotherNon-applicants

Through :- Mr. Aseem Sawhney, AAG.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

ORDER

CrlM No. 1347/2020 :

For the reasons stated in the application, the same is allowed. The
needful be done within three weeks from today.

Disposed of accordingly.

Bail App No. 223/2020 :

1. The charge sheet stands presented against the applicant-accused Amrit Pal Singh for commission of offence under Sections 302/380/454 IPC in FIR No. 21/2020 registered with Police Station, Janipur, Jammu for an occurrence which is alleged to have taken place on 05.03.2020 in the house of the victim Surinder Singh situate at Mandlik Nagar, Phase I, Paloura, Jammu.
2. The application is filed for grant of bail on the ground that a false case has been set up against the accused which is solely based upon

- circumstantial evidence. There is no circumstance which speaks of the involvement of the applicant in the alleged commission of offence. The application filed for grant of bail before the learned trial court has been rejected vide order dated 23.09.2020. Of course, the plea of Covid-19 pandemic has also been taken by the applicant for bail in the application.
3. The objections to the application have been filed wherein the application is opposed on the ground that the accused is involved in gruesome act and cannot be granted bail. The investigation has established the aforesaid offences against the applicant-accused.
 4. Heard learned counsel for the parties. The scanned record of the case is before the court.
 5. Mr. K. S. Johal, learned Senior counsel, appearing on behalf of the applicant, has strenuously argued that no case whatsoever is made out against the accused. The argument of the counsel is that there is no eye witness of the occurrence and the case is based upon the circumstantial evidence. Recovery of certain articles on the alleged disclosure statement made by the accused Amrit Pal Singh, the theft alleged to have been committed by the accused, medical report stating death of the victim because of asphyxia sustained in manual strangulation and the time recorded in the postmortem report regarding of death of the victim do not connect the accused with the commission of offence. Further, the injury received by the victim as per medical report is not grievous in nature which shows that at the most some scuffle can be said to have taken place between the victim and the accused and nothing more.

6. Mr. Aseem Sawhney, Learned Additional Advocate General, appearing on behalf of the respondents has argued that the points raised on behalf of the accused cannot be finally considered and commented upon in the bail application as the same are matter of trial. The court is not required to thrash the evidence that has been gathered during the course of investigation by the police as it is for the trial court to appreciate the same. The accused is involved in a heinous offence and cannot claim the bail as a matter of right. The application requires outright dismissal at this stage.
7. At the outset, it may be mentioned that it is stated before the court that the arguments on the charge/discharge could not be addressed due to one reason or another till date. This court will not assume the jurisdiction of the trial court on the aspect of the charges that may or may not be framed against the accused in the challan filed against him. The court is to deal with the situation where the challan has only been presented against the accused under Sections 302/380/454 IPC in the aforesaid challan. The court has been called upon to assess and appreciate the different angles of the prosecution case set up against the accused as is evident from the arguments that have been raised on behalf of the accused. The court is not to record any sort of finding on the arguments raised by the learned counsel for the applicant-accused which are based on the factual as well as legal aspects of the case. The learned Senior counsel has laid much stress on the disclosure statement allegedly made by the accused and the discovery made of ornaments in pursuance to the same in order to show that except for this evidence which itself does not connect the accused with the commission of

offence, there is no evidence on record which links the accused with the alleged commission of offence. The court cannot record any observation on this aspect of the case as the other circumstances that appear in the case also are part of the case set up by the police against the applicant. The court cannot appreciate the evidence that has been collected by the prosecution against the accused while deciding the bail application. It is suffice to mention here that after going through the challan it cannot be said that the present case is of no evidence against the accused only for the reason that there is no eye witness of the occurrence as per the challan nor can it be finally said that the circumstantial evidence through which the prosecution intends to prove its case against the accused can have no bearing whatsoever on the culpability of the accused. The court is not to anticipate the evidence that is to come on record on behalf of the prosecution.

8. The learned counsel for the applicant, in support of his contention, has placed reliance on AIR 1960 SC 1125, AIR 1971 SC 2016 and AIR 2007 SC 1356. There can be no quarrel with what has been observed and held by the Hon'ble Apex Court in the judgments. However, the same cannot be of any help to the applicant-accused at this stage.
9. The gravity of offence, evidence gathered by the police agency and the stage of the case do not entitle the applicant to bail in the present application.
10. The learned counsel for the applicant has also urged before the court that as the trial could not proceed due to COVID-19 pandemic and the challan is pending disposal for the last more than eight months the applicant should be bailed out. The extraordinary situation happening

- due to pandemic cannot be a ground to grant bail to the accused in the case which is otherwise at its initial stage. The court is not convinced with this argument of the applicant so as to grant bail to the accused.
11. The court finds no good ground to grant the prayer made in the application which is, accordingly, dismissed. Any expression used in the disposal of the present application shall have no bearing on the trial.

(Puneet Gupta)
Judge

Jammu:
24.02.2021
Pawan Chopra

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

