

**IN THE
COURT OF CHIEF JUDICIAL MAGISTRATE
SRINAGAR.**

CNR No.....JKSG-0300-7710-2023

File No.....7698/2023

D.O.I.....04-03-2023

D.O.O.....23-03-2023

IN THE CASE OF:

Patel Kiran Jagdish Bhai

S/o Jagdish Bhai

R/o Ghodasar Ahmedabad, Gujarat

(.....Applicant/accused)

Through:- Adv. Mir Tashveeq Gowher & Associates.

V E R S U S

UT of J&K through

SHO P/S Nishat, Srinagar

FIR No. 19/2023

Offence(s) U/S 419, 420, 467, 468 & 471 IPC.

Through:- APP, Mr. Mohsin Khan.

IN THE MATTER OF: Bail Application

CORAM: Raja Mohammad Tasleem.

JO Code:- JK-00117.

O R D E R

23-03-2023

Through the medium of this order I propose to decide instant bail application which has been moved by the applicant through his counsel on 04-03-2023.

Precisely, it is averred in the application that the accused has been arrested on 03-03-2023 by the Police Station Nishat, Srinagar without any rhyme and reason. The accused is a law abiding citizen who has never been involved in any criminal or subversive activities. Further, the FIR registered against accused in police station concerned is concocted, false and frivolous hence deserves to be given the concession of law. It is further averred that accused is deemed to be innocent until his guilt is proved and in case the discretion of bail is not exercised in favour of accused it shall definitely deteriorate the health condition of the accused. Further discretion if exercised in favour of the accused he shall comply with the directions of bail and shall not hamper or temper with the prosecution witnesses. Lastly it is prayed that accused may be released on bail.

On presentation of this application report has been sought from police station concerned and Ld. APP has also submitted detailed objections, besides I have also perused the CD file.

Briefly, police report reveals that Police Station Nishat, Srinagar received a reliable information that a fraudster namely Kiran Bhai Patel S/o Jagdish Bhai Patel R/o

Gujarat has indulged in criminal activities within the jurisdiction of Police Station Nishat, Srinagar and other parts of Kashmir valley and by employing high degree of forged means and with criminal intention has impersonated himself as Additional Director (Strategy and Campaign) PMO, New Delhi. The said individual, by resorting to cheating, forgery and impersonation has duped gullible people and also intentionally induced people to do and also to omit to do activities, under a well-knit plan for securing monetary as well as material benefits. The said act of the said fraudster has been found attracting cognizability to the extent of section 419, 420, 467, 468, 471 IPC. It is averred that during the investigation of the instant case, it came to fore that the accused by using his **fake identity as Dr. Kiran Bhai Patel Addl. Director (Strategy & Campaigns), PMO New Delhi** has managed to get security cover from Security Kashmir and has misused the same to visit some of the most secure and highly sensitive locations which in normal course no common individual or Tourist is authorized to access. It is averred that during investigation of the instant case, it surfaced that the accused by virtue of impersonation as being a highly ranked official in country's most important office

(PMO) has made a security breach and violated the security protocol, the intensions for same as yet is under investigation. The accused who was staying at Hotel Grand Lalit on 02-03-2023 was summoned & questioned regarding his position & post held in PMO but the accused could not prove any point. Accordingly the accused as per the evidences against him was called to PS and detained/ arrested on 02-03-2023 and remand of accused was granted by the Court from 04-03-2023 and statements of witnesses well acquainted with facts were recorded and Some CCTV footages were also seized and placed on record. It is averred that the accused was questioned & the accused admitted to the fact that in October 2022, the accused visited Kashmir along with his family. The accused by deceitful means managed to get security protocol Including BP vehicle/ PSO/ escort on the second day of his visit. The accused met few people In Kashmir including some top Government Officers by impersonating as an official from PMO New Delhi. The accused admitted that he visited few more times to Kashmir and managed to get full security protocol by impersonating as an official from PMO New Delhi. That on 02-03-2023, the accused again visited Srinagar along with two persons whom he already had

lured by showing the pictures of getting security protocol namely Amit Pandya and Jay Setapara of Gujarat. The accused had arranged the meeting of these persons with some Government officials. It is averred that keeping in view the sensitivity of the matter, a team of officials headed by one SI is already deputed to Gujarat to ascertain the facts and history of the accused. The mobile phones seized from the accused stand dispatched to Forensic Science Lab Gandhi Nagar Gujarat for necessary data extraction & opinion thereof and the accused by impersonating as being a highly ranked official from PMO, New Delhi deputed for some special task to Kashmir by virtue of security cover 2023 had already managed to visit URI Border Sector which is almost inaccessible keeping in view the security issues of the country & might had other plans too. The visit of the accused had breached the security protocol which may have negative impacts upon the security of the country which the accused may have noticed after his visit. It is averred that following cases in **Bayad Police Station District Arvalli vide C.R No. 47/2019 U/S 406, 420, 120-B IPC & Naroda Police Station (Ahmadabad City) vide C.R No. 66/2019 U/S 406, 420, 120-B IPC** are registered against

the accused. It implies that the accused is habitual cheater and his purpose of visit to Kashmir is under scanner. It is averred that the bank details of the accused are yet to be examined as communication stands made with banks. After examining the bank details and other records from his mobile phone, it may be ascertained the source of income of the accused & eventually may clear the purpose of visit of the accused to some highly secure & inaccessible locations in Kashmir. The investigation of the case is in its initial stage and the matter is highly sensitive and a possible security breach matter was averted on time. It has reliably come to know that the accused by using the fake identity of being a highly ranked official was planning to visit some of the most secured places which may had lead to compromising of the security of the country along the border. Also, the reports from FSL are pending and some more important witnesses are yet to be examined so as to clarify the purpose of visit of the accused to sensitive locations and using impersonated identity thereby acquiring high security cover.

OBJECTIONS.

The Ld. APP has submitted his detailed objections wherein he has strongly relied upon the report submitted

by police and he has further submitted that the accused to tempt the gullible citizens and others purportedly has made some false and frivolous documents in the shape of visiting cards etc, which have been seized from the accused and have been sent to expert for opinion. These omission and commission of the accused prima-facie disclose offences punishable U/S 419, 420, 468, 471 IPC and has been rightly booked so. The offences are heinous in nature besides being non-bailable as such accused cannot claim bail as a matter of right. In addition, the offence U/S 467 IPC carries punishment for life. Thus, the bail application in hand is also hit by embargo laid U/S 437 Cr.PC, which takes away the jurisdiction of granting the bail to the accused. It is submitted that the investigation in the case in hand is at its very initial stage the citizens who could have been lured and duped by the accused are being found out. The other sensitive aspects of the case as enumerated above are being investigated in full swing. As such, if accused is put on bail at this sensitive stage of investigation his going absconding and giving slip to the investigation is quite obvious. Also, his being at large at this stage would provide him opportunity to make all sort of effort to wash off the necessary and essential evidence of

the case. Thus, at this stage when the tip of iceberg vis-a-viz the crime under investigation has only surfaced the grant of bail to the accused is beyond stretch of investigation besides it would be a huge blow to the fair investigation. The report of the investigating agency filed herein giving the details of the case and the investigation thereof is self explanatory. It is submitted that there are already several FIRs under like provisions of law registered against the accused in his native place which depicts of his being highest nature of Conman and Thug. Thus, for the ends of fair investigation the bail of accused at this stage is uncalled for, as it will throttle its smooth conduct. It is further submitted that it has been laid down by the Hon'ble supreme Court of the country in catena of authorities that while dealing with the applications for bail in non-bailable offences, Hon'ble Courts shall take into consideration gravity of offence, Severity of Punishment which it carries on conviction, impact of such offences on larger public interest, security and integrity of state, possibility of tempering of evidence by accused and other like factors. It is submitted that all these factors tilt heavily for rejection of bail when apply to the facts of instant case. The material and evidence collected so far prima-facie indicates the

involvement of the accused in the commission of grave offences which craves for unhindered investigation, which is only possible when the accused remains in jail till its conclusion and lastly he has prayed for rejection of bail application.

ARGUMENTS.

During the course of arguments Ld. Counsel for the accused vehemently argued that the alleged accused person is innocent he has been arrested by the police on false and frivolous allegations. The alleged accused person has not committed any offence nor he is involved in any criminal activity. Ld. Counsel further argued that the accused is victim of political vengeance and enmity because he is closely connected with national politics, the counsel further went on arguing that the Hon'ble Superior courts of the country have strongly deprecated such arrests. The Hon'ble Supreme Court of India has give detailed guidelines in Arnaish Kumar's case and directions have been issued that while making arrests during the course of investigation the police machinery and investigating agencies are supposed to follow the guidelines and before effecting arrests notices are necessarily to be issued to the alleged accused persons which has not been

done by the investigating agency in the case in hand. Ld. Counsel further argued that the Hon'ble Superior courts of the country have laid more emphasis on life and personal liberty of a citizen and have even directed that where offences alleged to have been committed carries imprisonment upto seven years the arrests should not be made in a casual and mechanical fashion. Further, Ld. Counsel argued that the alleged accused person is a law abiding person and deeply rooted in the society hence shall not flee from the clutches of justice in case the discretion of bail is exercised in his favour and shall also cooperate with the investigating agency. During the course of arguments Ld. Counsel for the accused relied on the following authorities.

1. Dinesh Pandey Vs. State of U.P on 11 June, 2021.

In this matter, as is evident from the record, applicant is not named in the FIR. Neither he is the Director, Office Bearer and Manger of the GIPL and its sister companies nor there is any evidence to show that the applicant at any point of time induced or propagate to invest money in the Bike Boat Scheme launched by the GIPL. Entire money transaction took place between the GIPL and its sister companies and the applicant's company are

banking transaction. Thus, keeping in view the entire facts and circumstances of the case and comparing the same with the ingredients of offence under Sections 406, 420 and 409 IPC, the orders granting bail to co-accused Ajeet Kumar Urf Adesh Bhati and Satinder Singh Bhasin and also taking into consideration the settled principles of law for granting bail, without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail applications are allowed.

2. Ramesh Prased Vs. State of U.P on 30 Sep, 2022.

In view of the aforesaid discussion and keeping in view the fact that (i) the main allegation against the applicant is of using unfair means in a Public Examination, which offence carries a maximum punishment of imprisonment for three months and which is a bailable offence; (ii) all the offences alleged against the applicant are triable by a Magistrate; (iii) the applicant has no criminal history and (iv) the other co-accused persons have already been granted bail, I am of the view that the applicant is entitled to be released on bail in the present case.

Lastly, Ld. Counsel for the alleged accused person prayed that in the light of foregoing submission and legal

position discussed, the accused person may be granted concession of bail.

Ld. APP for the UT of J&K strongly opposed the instant bail application and vehemently argued that the accused person is not entitled for the concession of bail at this stage, because one of the offences i.e., Sec. 467 IPC levelled against accused carry the punishment upto life imprisonment, hence the accused cannot claim bail as a matter of right. Further, the legal position discussed and authorities relied upon by Ld. Counsel for the accused is only with regard to offences which carry punishment upto seven years hence the argument advanced by Ld. Counsel for the accused has no legal legs to stand on and does not cover the situation in the present case. The Ld. APP has further argued that the accused has posed to be as Addl. Director (Strategy and Campaign) PMO, New Delhi and under the garb of this fake identity the accused has succeeded in deceiving the high ranking officers of J&K and has also succeeded in persuading them to provide him Z-Security with bullet proof vehicle, thereafter accused person has moved to different places of the valley under the proper security cover as UT guest protocol, besides the accused has also visited the locations which are very

sensitive in terms of security point of view, which areas are normally in accessible to the ordinary citizens, hence the investigating agencies are thoroughly shifting out the matter, in order to see as to how it has been managed, therefore if at this crucial stage the accused is admitted to bail it shall definitely destroy the very fabric of the investigation. Ld. APP has further argued that the accused has reportedly made and manufactured some false and frivolous documents in the shape of visiting cards etc. which have been seized from the possession of accused and have sent for expert opinion. The experts have not yet sent their report with regard to those frivolous visiting cards on the basis of which the accused has succeeded in duping the people and authorities as well. The Ld. APP vehemently argued that as per reliable sources the accused is involved in identical case in his native place which of course shows the criminal tendency of the accused, in case in such a situation accused is enlarged on bail, it shall definitely be a premature action which shall definitely destroy the whole castle of investigation and while dealing with bail application in non-bailable offences the Hon'ble Supreme Court of India has heavily commanded that gravity and severity of punishment is necessarily to be taken into

account. Therefore, in these circumstances accused person is not entitled for the concession of bail which is required to be rejected in the interests of law and general public.

OBSERVATIONS.

After hearing Ld. Counsel for the applicant and Ld. APP for the UT of J&K and also from the perusal of whole material available on the file and legal position discussed, it is spectacularly evident.

1. That as per the police report the accused has prima facie forged and manufactured some documents including some visiting cards on the basis of which he has defrauded not only a single or group of person but extremely elevated class of the society including high officials of the civil administration and police authorities and at the end of the day has succeeded in getting Z Category Security, bullet proof vehicle and has enjoyed five star protocol brazenly for a considerable period of time. The documents, visiting cards and cell phone of the accused person have been sent for FSL examination, on the basis of which alleged Crime has been commuted, however the FSL examination report has not been received by the investigating agency.
2. That further reportedly investigation conducted so far is suggestive of the fact that the accused has visited most,

sensitive locations and areas of Kashmir Valley which are highly protected and extremely sensitive as far as present security scenario of Kashmir is concerned, hence this aspect of the matter has necessarily to be shifted out thoroughly by the investigating machinery as to how and with what motive and object the accused has visited these locations and areas.

3. That there is enough material available on the file, suggestive of the fact that while meeting different and variety of people and conducting meeting with highly elevated officials of civil administration and police the accused may have received hefty amount for different purpose which areas seem not to have been investigated so far and further no recoveries have been made by the investigating agency so far, hence a detailed and thorough investigating is also required to be conducted as far as this area of the matter is concerned.
4. That furthermore the meticulous and careful perusal of CD file and material available on record reflects that during this all period some more persons have remained closely connected with the accused person whose nexus with the accused person requires proper investigation.
5. That as far as sophisticated and well planned criminal activities of the accused are concerned a well knit network of the accused around cannot be ruled out in terms of

investigation so far conducted, resultantly there is every and reasonable apprehension that in case accused is released on bail he shall try to contact prosecution witnesses and shall definitely try to win over prosecution witnesses and shall also destroy the evidence which has not been collected by the investigating agency so far.

6. That so far as, law discussed and authorities relied upon by Ld. Counsel for the accused is concerned it does not cover the situation, resultantly has no application as far as case in hand is concerned, because one of the offence levelled against accused is Sec. 467 IPC which carries punishment of imprisonment for life. Hence, the accused cannot claim bail as a matter of right because he has applied for bail in terms of Sec. 437 Cr.P.C, clause (i) whereof specifically reads that “Such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life”. Therefore, it is as clear as anything that the case of the accused is not falling within the ambit and domain of Sec. 41 & 41-A of Cr.P.C hence cannot claim benefit of Sec. 41 & 41-A of Cr.P.C and guidelines of Arnaish Kumar as well.
7. That more surprisingly the accused has posed to be Additional Director (Strategy and Campaign) PMO, New Delhi which in normal course has not to be taken lightly,

hence again a thorough investigation is required to be conducted as to what could be the other possible connection of the accused which can be checked, scanned and controlled at the initial stage, so that an ugly situation is not again erupted.

Therefore, after all said and done and keeping into account observations made herein above, I am of the considered opinion that arguments advanced by Ld. APP are just, proper and appealing and carries much weight and on the other hand I respectfully disagree with the submission put forth by Ld. Counsel for the applicant because in case at this stage discretion of bail is exercised in favour of the accused it shall definitely destroy the very fabric of the investigation. Resultantly, in my considered opinion the instant application is devoid of any merit which deserves to be rejected, hence rejected. The application is accordingly decided which shall go to records after due completion.

Announced:
23-03-2023
UMER

(Raja Mohammad Tasleem)
Chief Judicial Magistrate,
Srinagar.