

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

Reserved on : 29.09.2022

Pronounced on : 17.10.2022

Bail App No.306/2022

Ravinder Gupta ..... Petitioner(s)

Through: Mr. Aseem Kumar Sawhney, Advocate

**Versus**

Union Territory of J&K ...Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

1. The instant application has been moved by the petitioner/accused, whereby he has sought bail in a case arising out of FIR No.53/2022 for offences under Sections 420, 467, 468, 379, 504, 506 IPC registered with Police Station, Gangyal, Jammu.

2. The facts leading to the registration of aforesaid FIR are that on 18<sup>th</sup> May, 2022, the complainant Kamal Nabh Sharma lodged a written complaint with the Police alleging therein that the petitioner herein has illegally/ forcibly taken possession of his land situated at Greater Kailash, Jammu. It was further submitted that the complainant had purchased a piece of land measuring 15 ½ marlas from attorney holder - Abdul Majid and the said land is falling in Khasra 549 min. According to the complainant, a sale deed was registered in his name and mutation was also attested in his favour.

He had constructed a boundary wall over the plot of land. He remained busy with his service career and when, after his retirement, he visited his plot of land, he found that the same has been illegally encroached upon and occupied by the petitioner, who, according to him, is a notorious land grabber. The complainant goes on to submit that he had approached the Assistant Commissioner Revenue on 12<sup>th</sup> May, 2015 and his application was marked to Tehsildar, Bahu for necessary action, whereafter the Patwari furnished his report in his favour. He has further submitted in the complaint that when he visited house of the petitioner and asked him to vacate the land, he was abused and threatened by him. He was further told by the petitioner that the land actually belongs to him. He was given by the petitioner a copy of the documents relating to the land, which, according to the complainant, are fake and forged. On the basis of the aforesaid report, the FIR came to be registered and investigation was set into motion.

3. During investigation of the case, the petitioner was arrested on 19<sup>th</sup> May, 2022. The investigation is stated to be in progress and it has been submitted by the respondent that demarcation of the disputed land is required to be conducted and the verification of the documents produced by the petitioner is also required to be undertaken.

4. The petitioner has contended that he has not committed any offence and that the dispute between the petitioner and the complainant is purely of civil nature relating to demarcation of the land. It has been submitted that the petitioner has not committed any offence even, as per the allegations made in the FIR, and as such, he cannot be denied the concession of bail.

5. The application has been resisted by the respondent by filing objections thereto. In the objections, the respondent has reiterated the allegations made in the FIR. It has been contended that the petitioner is a habitual offender, inasmuch as, 22 FIRs stand registered against him. It has been further contended that the petitioner has been booked under the Public Safety Act and has been kept in preventive detention because of his criminal background. It has also been averred in the objections that the investigation is still in progress and, as such, the concession of bail cannot be given to the petitioner at this stage.

6. It appears that the petitioner had approached the learned Judicial Magistrate 1<sup>st</sup> Class (City Judge), Jammu as well as learned Principal Sessions Judge, Jammu for grant of bail but he has failed to get the concession of bail from both the Courts below.

7. I have heard learned counsel for the parties and perused the material on record.

8. The guidelines relating to grant of bail have been laid down in Sections 437 and 439 of Cr.P.C. While in Section 437 Cr.P.C, certain restrictions and conditions have been laid down for grant of bail by a Court, the power to grant bail under Section 439 Cr.P.C for the High Court or the Sessions Court is wider. The overriding considerations in granting bail as laid down in Section 437 (1) and Section 439(1) of Cr.P.C, are the nature and gravity of the offence, the frivolity or otherwise of the prosecution case, the position and status of the accused with reference to the victim and the witnesses, the likelihood of accused fleeing from justice, the chances of

repeating of offence by the accused, the chances of tampering with the witnesses, the stage of investigation and the public interest.

9. The Supreme Court in the case of **Mahipal vs. Rajesh Kumar and another, (2020) 2 SCC 118**, while discussing the amplitude and power of the Court under Section 439 Cr.P.C, has observed as under:

*“The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straight jacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused sub-serves the purpose of the criminal justice system.”*

10. From the aforesaid discussion of law on the subject, it is clear that while nature of offence and severity of punishment is an important consideration while considering the bail plea of an accused, a *prima facie* view of involvement of the accused in the alleged crime is a factor which is also required to be considered. On this aspect of the case, the learned counsel for the petitioner has taken me through the contents of the FIR. He has contended that as per the contents of the FIR, the petitioner herein

claims to be in possession of the land belonging to the complainant on the basis of certain documents, which, according to the complainant, are forged. The petitioner has placed on record copy of sale deed dated 29<sup>th</sup> July, 2010 executed in his favour and in favour of his wife, which relates to land comprised in Khasra No.631 min of village Sunjwan. Another copy of lease deed of the same date executed in favour of the petitioner and his wife relates to land under Khasra No.630 min of revenue village Sunjwan. Thus, according to the petitioner, he is owner in possession of the land under Khasra No.631 min and lessee of land under Khasra No.630 min of village Sunjwan, whereas the complainant claims to be owner of land under Khasra No.549 min of the same village. Learned counsel for the petitioner has submitted that it is a case of dispute relating to demarcation of the land owned by the petitioner and the land owned by the complainant and not a case of petitioner having forged documents in his favour. Learned counsel has further argued that at best it can be a case of criminal trespass and criminal intimidation against the petitioner and both these offences are bailable in nature. The learned Counsel has further submitted that order of preventive detention passed against the petitioner stands quashed by this court.

11. It would be premature for this Court to deeply analyze the allegations made in the FIR lest it may prejudice the case of the prosecution. However, there appears *prima facie* merit in the submission made by the learned counsel for the petitioner that the dispute between the petitioner and the complainant appears to be essentially relating to demarcation of the land or at best a case of criminal trespass.

12. Apart from the above, record of the case shows that the petitioner has been in custody since 19<sup>th</sup> May, 2022 and by now investigation of the case must have progressed substantially. Even otherwise, as per the objections filed by the respondent, the only thing which is to be investigated is the verification of the documents produced by the petitioner and demarcation of the disputed land. For the said purpose, further incarceration of the petitioner may not be necessary.

13. It has been vehemently contended by the learned counsel for the respondent that the petitioner is a history-sheeter, inasmuch as 22 FIRs stand registered against him and, as such, he does not deserve the concession of bail. It seems that the learned Principal Sessions Judge, Jammu as well as the Judicial Magistrate 1<sup>st</sup> Class (City Judge), Jammu were persuaded by this aspect of the matter in refusing the concession of bail to the petitioner. It is true that the petitioner has been involved in a number of FIRs but he has placed on record copies of the orders passed by the Courts in at least six cases in which the petitioner has not even been put to trial but has been discharged at the stage of framing of charges itself, which supports the contention of learned Counsel for the petitioner that most of these cases are vexatious in nature. The respondent has not placed on record anything to show that the petitioner has been convicted in any of these FIRs. Therefore, merely because a number of FIRs stand registered against the petitioner, he cannot be denied concession of bail, particularly, when his involvement in commission of a non-bailable offence is not prima facie shown from the contents of the FIR. Even otherwise, there is nothing on record to show that

the petitioner has either the propensity to tamper with the prosecution witnesses or to thwart the course of investigation.

14. For the foregoing reasons, this petition is allowed and the petitioner is admitted to bail subject to the following conditions:-

- (i) That he shall furnish personal bond in the amount of Rs.50,000/ with one surety of the like amount to the satisfaction of the Investigating Officer;
- (ii) That he shall appear before the Investigating Agency as and when called;
- (iii) That he shall cooperate with the Investigating Agency and shall not tamper with the prosecution evidence.
- (iv) That he shall not leave the territorial limits of Union Territory of J&K without prior permission of the Investigating Officer.

(Sanjay Dhar)  
Judge

JAMMU  
17.10.2022  
Vinod, PS

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