

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

**Reserved on: 02.03.2023  
Pronounced on: 15.03.2023**

Bail App. No. 10/2023

Karnail Singh

.....Appellant(s)/Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Advocate with  
Mr. Ankesh Chandel, Advocate

**Vs**

Union Territory of J&K and another

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG

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

**JUDGMENT**

1. The petitioner has invoked jurisdiction of this Court under section 439 of the Code of Criminal Procedure (Cr. P. C.) seeking bail in a case arising out of FIR bearing Crime No. RC0042022A0008 for offences under Sections 201, 408, 411, 420 and 120-B IPC registered with Police Station, CBI, Jammu.
2. Briefly stated, the case of the prosecution is that pursuant to the decision of the Government of Jammu and Kashmir, the Central Bureau of Investigation (CBI) conducted investigation into the allegations of irregularities in written examination of Sub Inspector posts in the Jammu and Kashmir Police that was conducted by the Jammu and Kashmir Service Selection Board (for short, the J&K SSB). The aforesaid decision was taken by the Government pursuant to the report of the Enquiry Committee constituted by the Government. As per the report of the Enquiry Committee, there was a criminal conspiracy among the officials of J&K SSB, M/s Merit Trac Bengaluru, beneficiary candidates and other

accused persons, as result of which, gross irregularities were committed in the conduct of written examination of Sub Inspector posts in the J&K Police. The said examination was conducted by the J&K SSB on 27.03.2022 and its result was announced on 04.06.2022. The Government of Jammu and Kashmir after receiving complaints with regard to irregularities committed in the conduct of the examination, decided to cancel the examination and transfer the investigation to the CBI on 08.07.2022. This was done pursuant to the report of the Enquiry Committee.

3. The summary of the investigation conducted by the CBI as contained in the charge-sheet filed by the said agency before the Chief Judicial Magistrate, Jammu, is reproduced as under:

19. Thus, from the aforesaid facts and circumstances, statement of witnesses and documents collected during investigation, it is established that the accused Yatin Yadav entered into criminal conspiracy with other accused persons. In pursuance to the said criminal conspiracy, accused Pradeep Kumar, employee of KYR Infosys Pvt. Ltd. committed criminal breach of trust and stole the question paper of JKPSI exam and dishonestly handed over the same to accused Yatin Yadav. In pursuance to criminal conspiracy accused Yatin Yadav contacted other accused persons namely, Anil Kumar, Surender Singh, Bajinder Singh to arrange candidates for sale of question paper. In pursuance to criminal conspiracy, accused Surender Singh arranged candidate Akshay Kumar through accused Kashmir Singh and Asheesh Yadav arranged candidate Mukhtar Ahmed. Both these candidates were provided leaked question paper at Rewari. In pursuance to criminal conspiracy, accused Anil Kumar contacted accused Ashwani Kumar and Pawan Kumar to solicit candidates. Accused Bajinder Singh also solicited candidates through Sanjay Kumar Dutta (investigation on this aspect in underway). In furtherance to criminal conspiracy, accused Ashwani Kumar contacted accused persons namely Kewal Krishan, Raman Sharma, Jagdish Lal, Amit Sharma, Suresh Kumar, Rakesh for arranging candidates. In furtherance to criminal conspiracy, candidates were taken to Karnal and provided leaked question paper in lieu of money. In the entire offence, accused Ashok @ Ashok Pandit, Asheesh Yadav, Sulinder helped the accused in distributing question papers and in booking hotels. In pursuance to criminal conspiracy, accused Ashwani Kujmar and other accused persons of J&K made arrangements for providing leaked question paper to candidates at Gangyal. The accused Jagdish Lal further entered into criminal conspiracy with accused Dr. Karnail Singh, Shubam Kala and others and distributed leaked question paper at

the residence of accused Dr. Karnail Singh. Investigation established the role of candidates accused Jaisuriya Sharma, Tarsem Lal and Vikas Sharma in as much as they joined the criminal conspiracy actively participating in the same. They also accessed the leaked question paper themselves. Due to illegal access of question paper before the exam, these and other candidates secured position in the merit list published by JKSSB on 04.06.2022. The JKSSB was deceived into believing that the correct answers marked by these candidates were because of their merit but the actual position was that these candidates had adopted unfair means and had illegally accessed the question paper. As such, above mentioned accused persons, in criminal conspiracy with one another, cheated the JKSSB. Investigation revealed that the accused have leaked question papers of the other exams also. Investigation revealed that the accused also burnt the leaked question paper to destroy evidence.

20. Therefore, the accused persons have committed offences punishable under sections 120-B r/w 420, 411, 408 and 201 of IPC and substantive offences thereof.”

4. The petitioner has contended that he has been wrongly and falsely implicated in the aforesaid criminal case by the CBI. It has been submitted that the petitioner is a Doctor by profession holding the post of CMO/Commandant Medical in the Border Security Force and that he has unblemished service career to his credit. It has been averred that upon search of the premises of the petitioner, no incriminating material was recovered by the Investigating Agency. It is further averred that the petitioner has duly associated himself with the investigation and that the investigation is complete inasmuch as the charge sheet stands already filed before the learned Chief Judicial Magistrate, Jammu. It has been submitted that previous bail application of the petitioner was dismissed by this Court in terms of order dated 30.11.2022 and by that time, charge sheet had not been laid before the learned trial court. On this ground, it is urged that due to change in the situation, the petitioner deserves to be enlarged on bail. It has further been contended that even as per the charge sheet, there is no material against the petitioner to connect him with the alleged conspiracy. Lastly, it has been submitted that the wife of the

petitioner is suffering from a life consuming disease of bone marrow cancer and that she needs constant care and attention of the petitioner. It has also been submitted that the petitioner himself is suffering from psychiatric problems and his health is deteriorating day by day. On these grounds, the petitioner has sought bail in the aforesaid case.

5. The application has been resisted by the respondent-CBI by filing the reply thereto. In its reply, the respondent has submitted that the petitioner has resorted to filing of repeated bail applications before this Court and before the court of CJM, Jammu as well as the Sessions Judge without any change of circumstances and as such, the present bail application is not maintainable. The respondent has, after stating the role of the petitioner in the alleged conspiracy, submitted that the petitioner is the main accused and the kingpin of the conspiracy. It has been further submitted that though charge-sheet against the petitioner and 23 other accused has been filed, yet further investigation is underway to unearth the larger conspiracy as also to trace proceeds of the crime. It has further been submitted that role of other accused persons as well as the other allegations levelled in the FIR is yet to be investigated. According to the respondent, the petitioner is a habitual offender inasmuch as another FIR bearing No. RC0042022A0011 has been registered on 28.11.2022 against the petitioner which relates to the allegations of irregularities in the written examination of the Finance Accounts Assistants conducted by the J&K SSB. Regarding the medical ground, the respondent has submitted that there are other family members who can take care of wife of the petitioner and that the petitioner is being given appropriate medical treatment while

in custody in terms of the directions of the Chief Judicial Magistrate, Jammu. On these grounds, the respondent has sought dismissal of the bail application of the petitioner.

6. I have heard learned counsel for the parties and perused the record of the case.

7. So far as the principles governing the grant or refusal of bail are concerned, the same have been elucidated in a large number of judgments rendered by the Supreme Court and our own High Court. These principles may be summarised as under:

- i) the gravity of the offence and nature of accusation including severity of punishment in the case of conviction.
- ii) the position and status of the accused vis a vis victims/witness.
- iii) the likelihood of the accused fleeing from justice.
- iv) the possibility of the accused tampering with the evidence and or witness and obstructing the course of justice.
- v) the possibility of the repetition of the offence
- vi) the prima facie satisfaction of the court in support of the charge including frivolity of the charge.
- vii) stage of the investigation
- viii) larger interest of the public or the state.

8. The Supreme Court in **Mahipal v Rajesh Kumar and anr, (2020) 2 SCC 118**, while discussing the amplitude and power of the Court under section 439 Cr.P.C. has observed as under:

“12 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. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.”

9. Recently, the Supreme Court in the case of **Brijmani Devi v Pappu Kumar and another, (2022)4 SCC 497**, after surveying the law on the subject for grant or refusal of bail, observed as under:

*35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.*

*36. We have extracted the relevant portions of the impugned orders [Pappu Kumar v. State of Bihar, 2021 SCC OnLine Pat 2856]· [Pappu Singh v. State of Bihar, 2021 SCC OnLine Pat 2857] above. At the outset, we observe that the extracted portions are the only portions forming part of the “reasoning” of the High Court while granting bail. As noted from the aforesaid judgments, it is not necessary for a court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. At the same time, a balance would have to be struck between the nature of the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the court in support of the charge against the accused.*



*37. Ultimately, the court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other.*

10. From the foregoing enunciation of law on the subject, it is clear that overriding considerations, in granting bail as have laid down in Section 437(1) and Section 439(1) of the Cr.P.C, are 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 witness, the likelihood of the 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. While in section 437 Cr.P.C, certain restrictions and conditions have been laid down for grant of bail in a court, the power to grant bail under section 439 Cr.P.C. for the High Court or the Sessions Court is wider.
11. In light of the position of law as analysed hereinbefore, let us now consider the facts of the instant case. As per the charge-sheet, the role of the petitioner in the alleged conspiracy relating to the leak of the question paper is of paramount importance. According to the prosecution, the petitioner entered into criminal conspiracy with the accused Jagdish Sharma, Shubam Kala, Vijay Kumar and others and pursuant to the said conspiracy, he made arrangements for providing access to the leaked question papers to his son-Shubam Kala at Gangyal. Accordingly, leaked question papers was brought to the residence of the petitioner by accused Jagdish Lal and three candidates were provided the leaked question paper at the residents of the petitioner with his connivance and in his presence. It was revealed that on the direction of the petitioner, driver of his official

vehicle, Ajay Kumar picked up accused Shubam Kala in the vehicle on 26.03.2022 from the desired place. On the morning of 27.03.2022, the driver, Ajay Kumar brought accused Shubam Kala, accused Jagdish Lal and Paras Sharma near Asia Hotel, Jammu and later on he brought them to the residence of the petitioner. The investigation has revealed that the petitioner was in touch with the accused Jagdish Lal and Vijay Kumar during the relevant period and on the date of examination, he had made three calls to Ashok Kumar, Controller of the Examination, J&K SSB. The petitioner was also in constant touch with his driver-Ajay Kumar during the relevant period. It has also been established that the accused Jagdish Lal who had stolen one of the leaked question paper brought the same to the residence of the petitioner for selling it to the candidates and the petitioner was in constant touch with the said Jagdish Lal.

12. From the aforesaid allegations made in the charge sheet, which are supported by the evidence collected by the Investigating Agency during the course of the case, it is clear that the petitioner has played a vital role in the conspiracy relating to leak and subsequent sale of question papers for selection to the posts of Sub Inspector that was being conducted by the J&K SSB. The charges levelled against the petitioner cannot, therefore, be termed as baseless as has been contended by the learned senior counsel appearing for the petitioner.
13. It has been contended by the learned senior counsel appearing for the petitioner that investigation in the case is complete and the charge sheet has been laid before the learned Magistrate, as such, the petitioner deserves to be enlarged on bail. It is true that the charge sheet has already



been laid before the learned Magistrate but in the charge sheet, it is clearly mentioned that further investigation to unearth larger conspiracy, to trace proceeds of crime, to establish role of other accused persons and to probe other allegations levelled in the FIR is underway. In the charge sheet, it is clearly mentioned that on certain aspects of the case, the investigation is still underway. The investigation relating to the role of the petitioner to the extent of his dealings with one of the kingpins accused-Jagdish Lal may be over but then investigation into the larger conspiracy is still underway and as such, the contention of the learned senior counsel for the petitioner that investigation in the case is complete, cannot be accepted.

14. It has been contended by the learned counsel appearing for the petitioner that the maximum sentence provided for the offences for which the petitioner has been booked is, seven years of imprisonment and as such, there is no statutory or legal bar to grant of bail in favour of the petitioner. There can be no doubt about the fact that the petitioner is stated to be involved in offences which do not carry punishment of imprisonment of more than seven years but the nature of accusations against the petitioner makes the crime alleged to have been committed by him extremely heinous. The severity of punishment that the charge may entail may be one of the considerations for grant of bail, but then nature and seriousness of allegations against a person seeking bail is also of vital importance. A person, who indulges in facilitating leakage and sale of question papers relating to competitive examinations, plays with the career and future of thousands of young aspirants. Such an act is more heinous than an offence of murder because by killing a person only one family gets affected but by

ruining the career of thousands of aspirants, whole society is adversely impacted. Therefore, the charges levelled against the petitioner can by no stretch of imagination be termed as ordinary charges.

15. The Supreme Court in **Ghulabrao Baburao Deokar vs. State of Maharashtra, (2013) 16 SCC 190** has observed that nature and seriousness of an economic offence and its impact on the society are always important consideration in such a case and they must squarely be dealt with by the court while passing an order on bail application.
16. In **Y. S. Jagan Mohan Reddy v CBI, (2013) 7 SCC 439**, the Supreme Court while dealing with the bail application relating to the economic offences has observed as under:

“34) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35) While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

17. From the foregoing analysis of law relating to grant of bail in economic offences which affect a larger section of the society, the mere fact that the offence with which an accused is charged does not carry a very severe punishment, by itself is not a ground to enlarge the accused on bail having regard to the large scale ramifications of the acts of such nature. The petitioner, therefore, on this ground also does not deserve the concession of bail.

18. Apart from the above, the conduct of the petitioner also weighs heavily against him. It has been submitted by the respondent that another FIR relating to question paper leakage of Finance Accounts Assistant examination conducted by the J&K SSB has been registered in which role of the petitioner has surfaced. Not only this, even the report of the Enquiry Committee set up by the Government is damning against the petitioner. In the said report, it has been noted that the petitioner had managed to induct several candidates in the BSF against financial consideration and that he had advertised secretly that he would help prospective candidates in passing the medical tests. The report further records that the petitioner has close links with some high and mighty politicians. In the face of the propensity of the petitioner to indulge in similar types of offences, it may not be appropriate to enlarge him on bail at this stage when the investigation relating to the larger conspiracy of question paper leakage of Sub Inspector posts is still underway.
19. That takes us to the grant of bail on medical grounds as has been projected by the petitioner. So far as wife of the petitioner is concerned, there are other family members in his family including his son who can take care of her ailments. The petitioner himself is not shown to have been suffering from any such ailment that cannot be managed while keeping him in custody. Therefore, on this ground also, the petitioner is not entitled to grant of bail.
20. Lastly, it is required to be noticed that the petitioner has moved repeated bail applications before this Court as well as courts below ever since he was arrested in the case on 18.10.2022 without any success. On

27.10.2022, learned Chief Judicial Magistrate, Jammu rejected the first bail application of the petitioner. On 30.11.2022, bail application of the petitioner was rejected by this Court. On 06.12.2022, petitioner moved another bail application before the Chief Judicial Magistrate, Jammu and the same was rejected on 23.12.2022. On 26.12.2022, another bail application was moved by the petitioner before the learned Additional Sessions Judge, Jammu and the same was dismissed on 11.01.2023. Without wasting any time, the petitioner again moved the instant bail application before this Court on 16.01.2023. There can be no dispute to the legal position that an accused can maintain a bail application before a superior court once his application for grant of bail by the subordinate court has been rejected without there being any change of circumstances but then the petitioner has not been able to persuade this Court or to take a view different from the one taken by the courts below.

21. Even at the time when earlier bail application of the petitioner filed before this Court was considered and thereafter decided, the investigation of the case was complete. In fact, on 11.11.2022 orders were reserved by this Court in the previous bail application of the petitioner and on the very next date i.e. on 12.11.2022, the respondent filed charge sheet against the petitioner before the Chief Judicial Magistrate, Jammu meaning thereby that there has been no change of circumstances after the rejection of the petitioner's earlier bail application by this Court on 30.11.2022 till the filing of the instant bail application. On this ground also, the petitioner does not deserve to be enlarged on bail at this stage.

22. For all what has been discussed hereinabove, I do not find any merit in the instant bail application. The same is dismissed. However, the respondent-Investigating Agency is directed to complete the further investigation in the case and file supplementary charge sheet, if any, expeditiously, preferably within a period of three months from today.
23. The petition stands dismissed accordingly.

**(SANJAY DHAR)**  
**JUDGE**

**Jammu**  
15.03.2023  
Rakesh

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

