

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

Reserved on: 06.04.2023

Pronounced on: 13.04.2023

CRM(M) No.117/2022

JANBAZ AHMAD DASS

...PETITIONER(S)

Through: -M/S: Tahir Ahmad Bhat & Bhat Shafi,
Advocates.

Vs.

UNION TERRITORY OF J&K

...RESPONDENT(S)

Through: - Mr. Mubashir, Dy. AG.

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

JUDGMENT

1. The petitioner has challenged order dated 17.03.2022 passed by learned Principal Sessions Judge, Kulgam, whereby his application for grant of bail in a case arising out of FIR No.12/2021 for offences under Section 8/15 of NDPS Act read with Section 207 Motor Vehicles Act registered with Police Station Qazigund, has been dismissed.

2. As per the prosecution case, on 21.01.2021, the police of Police Post, Mir Bazar, during Naka duty, intercepted a vehicle bearing No.BP10 FS-6402, in which the petitioner along with co-accused driver, were travelling. During the search of the vehicle, 9 Kgs and 8 grams of Poppy Straw were recovered and, accordingly, the petitioner and the co-accused Umar Amin Thakur were arrested. It seems that the learned Principal Sessions Judge, Kulgam, has granted bail to co-accused Umar Amin

Thakur and vide order dated 03.03.2021, interim bail was granted to the petitioner as well. One of the conditions for grant of interim bail laid down in the bail order dated 03.03.2021 was that the petitioner shall not indulge in subversive activities or repetition of offences or any criminal activities.

3. It appears that during the pendency of the bail application, the petitioner was booked in FIR No.55/2021 for offences under Section 8/15 of NDPS Act of Police Station, Bijbehara. When this fact was brought to the notice of the learned Sessions Judge, the impugned order dismissing the bail application of the petitioner came to be passed on the ground that the petitioner has violated one of the conditions of the interim bail.

4. The petitioner has challenged the impugned order on the ground that the same has been passed by the learned Sessions Court in violation of the settled procedure. It has been submitted that there was no material before the learned trial court to even remotely suggest that the petitioner had misused the concession of bail. It is further submitted that mere registration of FIR against the petitioner would not offer a ground for cancellation of his bail.

5. The petition has been resisted by the respondent by filing a reply thereto. In its reply, the respondent has reiterated the facts narrated in the FIR and it has been submitted that the petitioner has committed a heinous offence and, as such, he does not deserve the concession of bail, particularly when he has violated one of the conditions of interim bail.

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

7. The moot question which is required to be determined by this Court in this petition is as to whether mere registration of an FIR against an accused who has been enlarged on bail would be good enough ground to withdraw the concession of bail granted in his favour.

8. In **State of Rajasthan vs. Mubin and others**, 2011 CrI.L.J 3850, a Division Bench of Rajasthan High Court has, while considering this proposition of law, made certain observations in paragraphs of 9 and 10 of the judgment. The same are relevant to the context and are reproduced as under:

“9. The primary question which is to be considered by us in this case is as to whether the accused applicants had committed any offence, during the pendency of the appeal, on account of lodging of some first information reports. In other words, can it be said that a person has committed an offence when a first information report is lodged against him. In our considered opinion, merely lodging of a first information report, does not amount to commission of an offence and it is only accusation/allegation which can be said to be leveled against the accused person at the stage. As a matter of fact, the question as to whether an offence has been prim facie committed or not is considered when an opinion is formed by the Court after applying mind on the material before it. That stage would come only at the time of framing of charge. It would be relevant to mention here that the legislature, in its wisdom, has clearly laid down the distinction in the provisions under Section 228, Cr. P.C. and the terminology used at the stages prior to it. The relevant provisions of the Code of criminal procedure is as under: -

'228. – Framing of charge – (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which –

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate (or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the

Judicial Magistrate of the first class, on such date as he deems fit, and thereupon on such Magistrate) shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report; (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.'

In other words, an accused can be said to have committed an offence only when a Court, after considering the material before it and hearing the parties, forms an opinion to that effect, at the time of framing of charge. It is only after judicious consideration by a Court and an opinion is formed by it for presuming the commission of an offence that an accused can be said to have committed an offence. Therefore, an offence can be said to have been committed only at the stage of framing of charge when the concerning Court forms an opinion for presuming that the accused has committed the offence and not at earlier point of time. The word 'commit' as per Johnson Dictionary means 'to be guilty of a crime.'

In such view of the matter, merely on filing of first information reports against the accused applicants, it cannot be said that they had committed any offence during the period of bail. Consequently, they did not breach the conditions so imposed by the Court while granting order of bail on 12-9-2006.

10. For the aforesaid reasons, we are of the view that the accused applicants had not committed any breach of conditions imposed on them on 12.09.2006. Moreover, the accused applicants were awarded acquittal by the learned trial Court on 5.5.2006 and it is against the said judgment that the prosecution had preferred the present appeal in which they were given the benefit of bail, during the pendency of the same. The accused applicants are in custody since 12.06.2008."

9. From the afore-quoted observations of Rajasthan Court, it is clear that an accused can be said to have committed an offence when charges are framed by the Court against him. It is only at that stage that the Court, after considering the material collected by the Investigating Agency during investigation of the case, forms a, prima facie, opinion as to whether accused has committed an offence. Thus, merely because an FIR

has been registered against a person, it cannot be stated that he has committed an offence.

10. A Single Judge of the Karnataka High Court in the case of **Khajim @ Khajimullah Khan vs. State of Karnataka** (Criminal Revision Petition No.1364/2019 decided on 12th December, 2019) has, in somewhat similar circumstances, observed that merely because of registration of an FIR against an accused, it cannot be said that he has committed any offence mentioned therein during the bail period. It has been further held in the said case that until the trial is held and the accused is held guilty, he is said to be innocent. The Court went on to hold that under such circumstances if a case has been registered against the accused, it cannot be treated as a breach of conditions imposed by the Court while granting order of bail.

11. From the foregoing analysis of the law on the subject, it is clear that mere registration of an FIR against the petitioner during the pendency of his bail application when he was on interim bail, cannot amount to violation of the conditions of interim bail. This is so because mere registration of FIR does not mean that the petitioner had indulged in subversive activities or in any offence or any criminal activity thereby violating one of the conditions of bail.

12. When the learned Sessions Court considered the bail application of the petitioner on 17.3.2022, it was incumbent upon the said Court to apply its mind to the material before it and satisfy itself on the basis of the said material as to whether breach of condition committed by the petitioner goes to the root of the case that would thwart the investigation or trial of

the case. The learned Sessions Judge has not at all dealt with this aspect of the matter and has withdrawn the concession of bail granted to the petitioner only on the ground that he had been booked in an FIR. There was no material before the Sessions Judge to show that the petitioner had either misused the concession of bail or that he had tampered with the prosecution witnesses. Only on the basis of accusations made in the FIR, the learned Sessions Judge withdrew the concession of bail in a mechanical manner without considering as to whether any supervening circumstances have rendered the fair investigation and trial of the case impossible. The impugned order passed by the learned Sessions Judge is, therefore, unsustainable in law.

13. For the foregoing reasons, the petition is allowed and the impugned order passed by the learned Sessions Judge, Kulgam, is set aside. The interim bail granted to the petitioner by the learned Sessions Judge vide his order dated 03.03.2021 shall stand restored and the learned Sessions Judge shall pass final orders on the bail application of the petitioner in accordance with the law within a period of fifteen days from the date a copy of this order is made available to the said Court.

14. A copy of this order be sent to the Court of learned Sessions Judge, Kulgam, for information and compliance.

(Sanjay Dhar)
Judge

Srinagar
13.04.2023
"Bhat Altaf, PS"

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