

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

Bail App No.26/2023

Reserved on 13.06.2023
Pronounced on 16.06.2023

Tundup NurbuPetitioner(s)/Appellant(s)

Through :- Mr. Gagan Oswal, Advocate.

V/s

Union Territory of Ladakh & Ors.Respondent(s)

Through :- Mr. Vishal Sharma, DSGI for R-1&2.
Mr. Farman Ali Magrey, Advocate for R-3.

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

1. The petitioner through the medium of this bail application seeks bail in anticipation of his arrest, in a case registered vide FIR No.6/2023 on 13.01.2023 at Police Station Leh for the commission of offences punishable under Sections 171-G, 420, 466, 468 and 471 IPC, asserting therein that he has been falsely implicated in the case on a complaint filed by his opponent-respondent No.3 on account of political rivalry and that the complaint does not disclose commission of any offence by the petitioner. This Court vide interim order dated 30.01.2023 admitted the petitioner to interim bail in the event of his arrest subject to certain objections.

2. Pursuant to notice the official respondents have filed the objections asserting therein that the complaint has been registered by respondent No.3-Shri Skalzang Dorjey against the petitioner with the allegations that he had committed an offence while filing his nomination form as a candidate of the

Congress Party in election to the 6th Ladakh Autonomous Hill Development Council which was conducted in the year 2020 for Phayang Constituency as the petitioner had filed information of his date of birth on 01.10.2020 in accordance with rules of the Ladakh Autonomous Hill Development Council Rules, 1995. It was further contended that the complainant had alleged that the petitioner had forged his date of birth certificate reflecting his date of birth as 22.11.1993 whereas his actual date of birth as per Aadhar Card and matriculation certificate issued by Central Board of Secondary School Education (CBSE) was 22.11.1995, as such, he had committed offence punishable under Sections invoked in the FIR.

3. Learned counsel for the petitioner argued that it is a case of false implication of the petitioner by his opponent due to political rivalry who has lodged a false and frivolous case against the petitioner whereas the fact of the matter is that the petitioner had not committed any such offence and even if there was any grievance to the complainant against the petitioner, he had the remedy of filing an appeal under Section 12 of the Ladakh Autonomous Hill Development Council Act, which has not been resorted to by the complainant and that after a lapse of more than two years since the election of the petitioner as Councilor, the complainant had lodged a false complaint against him just for his harassment. He has further argued that the petitioner is entitled to be admitted to bail in anticipation of his arrest. He also argued that the petitioner had filed this bail application before the Court as the learned Sessions Judge at Leh was on leave and he filed this application before this Court as he had no other remedy available. It is finally prayed that the petitioner who had been granted interim bail, be admitted to bail finally.

4. Learned counsel for the respondents on the other hand argued that the petitioner against the settled legal position, in view of the concurrent jurisdiction under Section 438 CrPC has to firstly approach the Sessions Court for redressal of his grievance while seeking bail in anticipation of his arrest in a non bailable offence, however, petitioner has directly filed instant bail application before this Court just on a superficial ground that on that day the Presiding Officer of the Sessions Court was not available due to leave. They have also argued that the petitioner has not cooperated with the Investigating Agency who has taken cognizance by lodging an FIR to enquire/investigate into the serious allegations of forgery committed by the petitioner while filing his nomination for the Councilor of Ladakh Hill Development Council, Leh. It has also been argued that the petitioner, despite being not qualified to contest the election being under age, tampered with his date of birth certificate and succeeded to file the nomination and was also elected to the Council, therefore, he had committed serious offence not only by committing forgery but has also cheated his electorates i.e., voters of his constituency who voted in his favour and returned him to the Council though he has not qualified even to contest the election. They have further argued that in view of the facts and circumstances of the case, the petitioner is not entitled to be admitted to bail.

5. Heard and considered.

6. Though the practice to file bail in anticipation of arrest is that the same is to be filed in case of concurrent jurisdiction before the Lower Court i.e., Sessions Court in the district, however, the applicant while filing this petition before this Court had specifically pleaded that the Presiding Officer of Sessions Court at Leh was on leave, as such, a judicial notice would have been taken by

the Bench when this application was entertained. It is not that the application had been entertained against jurisdiction but this Court as well as Sessions Court having the concurrent jurisdiction and due to non availability of the Presiding Officer in the Sessions Court, the application had been filed before this Court and rightly entertained also.

7. Since none of the offences under Sections 420, 466, 468 and 471 is punishable with more than 7 years of punishment and in this case. In the considered opinion of this Court, particularly, having regard to the facts and circumstances of the case custodial interrogation of the petitioner as accused is not required as the matter with regard to forgery of the date of birth certificate can be verified from the record which may not be in possession of the petitioner but some public authority.

8. Having regard to afore stated reasons, there is no harm in granting bail to the petitioner for the commission of aforementioned offences. The petitioner had already been granted bail in anticipation of his arrest as an interim measure vide order dated 30.01.2023 passed by this Court, which is made absolute subject to same terms and conditions as recorded in that order.

9. Bail application stands disposed of.

(MA CHOWDHARY)
JUDGE

Jammu:
16.06.2023
Surinder

Whether the order is speaking?	Yes
Whether the order is reportable?	Yes