

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

Bail App No. 290/2023

Ravi Joon and another petitioner (s)

Through :- Mr. Nirmal Kotwal Advocate.

V/s

UT of Ladakh Respondent(s)

Through :- Mr. Vishal Sharma DSGI.

Coram: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

ORDER

(22.12.2023.)

1 Through the medium of this application, the applicants seek bail in anticipation of their arrest in a case FIR No.25/2023 registered for the offences punishable under [Sections 406/408/409/420/120-B](#) IPC and Sections 65/66/66-D/43(a)(c)(g)/84-B/84-C and 85 IT Act.

Factual matrix:

2 On 21.02.2023, Police Post Housing Colony, Leh received a written complaint from one Pradeep Kumar of KV School Leh stating therein that one site supervisor was caught catching pictures and there is an apprehension that some malpractice is taking place in which fairness of the exam is compromised. On this, FIR No. 25/2023 was registered with Police Station, Leh. During the course of investigation, statements of complainant and eyewitnesses were recorded. After fulfilling all the requisite formalities the

investigation was culminated in the form of chargesheet against 33 accused persons including the petitioners herein.

3 The present application has been filed on the ground that the other co-accused persons who were on similar footing have already been bailed out. It is submitted that the applicants have not committed any cognizable offence and there is no involvement of the applicants in the impugned FIR. Learned counsel for the applicants has submitted that the applicants belong to a very ordinary family having no influence in the society to prevail upon any of the witnesses and, therefore, enlarging them on bail will not prejudice the case of the prosecution. The applicants undertake that they are ready to cooperate with the investigation and shall not tamper with any evidence. They further undertake that if they are released on bail they will abide by all the terms and conditions which may be imposed by this Court. In support of his case, learned counsel for the applicants has relied upon a judgment of Apex Court rendered in a case titled **Dataram Singh vs. State of Uttar Pradesh (2018) 1 SCC (Cri) 675**.

4 *Per contra*, Mr. Vishal Sharma learned DSGI has submitted that the applicants are absconding till date and have not participated in the investigation. It is submitted that the chargesheet in the instant case has been filed. It is contended that the applicants have directly approached this Court without exhausting the remedy before the Sessions Court. Mr. Sharma has submitted that the offences committed by the applicants are very serious and grave. He has prayed for dismissal of the instant application. In order to support his submissions, Mr Sharma has relied upon a judgment of Single

Bench of this Court rendered in a case titled **Rouf Ahmad Mir vs. SSP and another.**

5 Heard learned counsel for the parties and perused the record of the case.

6 It appears that the applicants, instead of appearing before the court below, filed the instant application under Section 482 [CrPC](#).

7 There is no denial to the fact that the jurisdiction of the Sessions Court and the High Court is concurrent. Even otherwise, the applicants have not availed one remedy, which was available to them before the sessions Court, therefore, they lost one opportunity causing no prejudice to complainant party. Besides, the law on the subject is very clear that the superior Court can entertain the application for pre-arrest bail and grant relief to the accused. The judgment relied upon by Mr. Vishal Sharma learned DSGI does not help him as the Apex Court in a catena of judgments has held that jurisdiction under Section 438 Cr.PC is concurrent and a party can approach the High Court without approaching the Sessions Court.

8 After having heard the learned counsel for the parties and looking to the fact that identically placed co-accused persons have been granted bail and the said fact has also been admitted by the respondent in its response, therefore, the bail cannot be denied to the applicants herein.

9 Record reveals that the investigation is complete and the chargesheet is filed before the trial Court. All the co-accused have already been granted bail. Merely because it was kept open for the applicants to surrender and apply for regular bail after filing of the charge sheet, the same does not

preclude the applicants to apply for anticipatory bail under Section 438 Cr.P.C.

10` ` For the aforesaid reasons, I am of the view that it is a fit case for grant of anticipatory bail. Accordingly, the application is allowed on the following conditions:

(i) In the event of arrest of applicants, they shall be released on bail subject to their furnishing personal bonds in the sum of Rs.50,000/-each with one surety each of the like amount to the satisfaction of the I.O.

(ii) The applicants shall make themselves available before the I.O

(iii) The I.O concerned shall produce them before the trial Court in order to face the trial of the instant case.

(iv) in case the applicants fail to abide by the conditions of the bail, the respondent shall be at liberty to approach this Court for cancellation of bail granted in their favour.

11 Disposed of as such.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Jammu
22.12.2023
Sanjeev