

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT SRINAGAR**

**CRM(M) No.10/2022
CrIM No.29/2022**

GANI BHAT & OTHERS **...PETITIONER(S)**

Through: Mr. N. A. Ronga, Advocate.

Vs.

STATE OF J&K **...RESPONDENT(S)**

Through: Mr. Ilyas Laway, GA.

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

**(ORDER)(ORAL)
27.12.2023**

1) The petitioners have challenged the proceedings emanating from FIR No.304/2007 for offences under Section 8/20 of NDPS Act registered with Police Station, Sumbal, that are stated to be pending before the Court of Principal Sessions Judge, Bandipora. Challenge has also been thrown to order dated 24.01.2008 passed by the learned Sessions Judge, whereby the petitioners have been declared as absconders and general warrants of arrest have been issued against them.

2) It has been submitted that pursuant to registration of FIR No.304/2007, challan came to be filed against the petitioners and two more persons, namely, Mohammad Yousuf Bhat and Ghulam Mohammad Ahangar, before the learned Sessions Judge, Bandipora. According to the petitioners, the challan was produced against them without informing them and the learned Sessions declared them as absconders in terms of order dated 24.01.2008 without following the procedure prescribed for the

purpose of declaring a person as absconder. It has also been submitted that other two accused persons, against whom trial has proceeded in the absence of the petitioners, have been acquitted by the trial court in terms of judgment dated 22.06.2009.

3) I have heard learned counsel for the parties and perused record of the case including the trial court record.

4) A perusal of the record of the trial court would show that the challan was presented before the Court on 24.01.2008 and on the same day, the petitioners were declared as absconders, whereafter general warrants of arrest were issued against them. The challan thereafter proceeded against only those two accused who had appeared before the trial court. The record of the trial court shows that before declaring the petitioners as absconders, the learned Sessions Judge has neither recorded the statements of the executing officials nor has he recorded the satisfaction that the petitioners are avoiding their arrest. The impugned order dated 24.01.2008 passed by the learned Sessions Judge to the extent of declaring the petitioners as absconders exhibits total non-application of mind on the part of the learned Sessions Judge. The same is, therefore, not sustainable in law.

5) So far as challenge to the proceedings filed against the petitioners before the learned Sessions Judge, Bandipora, are concerned, once the challan has been filed against them, it is open to them to approach to the learned Sessions Judge for pleading their discharge or to face the trial. It would not be appropriate for this Court to render any opinion as regards the question whether or not the offences are made out against the petitioners on

the basis of the material available in the challan, as the same may prejudice their case at the time of consideration of framing of charge by the trial court.

6) In view of the above, while setting aside order dated 24.01.2008 to the extent of declaring the petitioners as absconders, it is directed that the petitioners shall surrender before the learned trial court by 28th February, 2024. Till such time, the petitioners, in the event of their arrest, shall be released on bail subject to furnishing of bail bonds and surety bonds in the amount of Rs.50,000/ (rupees fifty thousand) each to the satisfaction of the learned trial court. Upon surrender of the petitioners before the trial court, the question regarding grant of bail to them shall be considered by the trial court on merits, notwithstanding the fact that the petitioners have been given interim protection by this Court.

7) The petition shall stand disposed of.

8) A copy of this order be sent to the learned trial court for information.

(SANJAY DHAR)
JUDGE

Srinagar
27.12.2023
"Bhat Altaf, PS"

Whether the order is reportable: Yes/No