

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

CRM(M) No.529/2023

ABDUL HAMID ALIE **...PETITIONER(S)**

Through: Mr. Shuja-ul-Haq, Advocate.

Vs.

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

Through: Mr. Mohsin Qadiri, Sr. AAG, with
Mr. Faheem Nissar, GA.

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

(ORDER)(ORAL)
27.12.2023

1) The petitioner has challenged order dated 22.09.2023 passed by learned Principal Sessions Judge, Anantnag, whereby interim bail granted to him in terms of order dated 11.08.2022 on the recommendations of Under Trial Review Committee (hereinafter referred to as "the UTRC"), has been withdrawn and the petitioner has been directed to be taken into custody.

2) Issue notice to the respondent. Mr. Faheem Nissar, GA, accepts notice on behalf of the respondent.

3) Heard learned counsel for the parties and perused the record.

4) It appears that, in terms of order dated 11.08.2022, on the basis of an application made by the Secretary DLSA, Anantnag, before the learned Principal Sessions Judge, Anantnag, the petitioner was admitted to interim bail subject to the conditions contained in the said order. It seems that

UTRC had recommended release of the petitioner as he was falling under one of the categories mentioned in “Campaign under release UTRC@75”. It also appears that the UTRC in its meetings dated 25th July, 2022 and 08.08.2022 came to the conclusion that the petitioner should be recommended for release on bail. The application was opposed by the Public Prosecutor by contending that the petitioner is involved in a case relating to possession of commercial quantity of contraband.

5) The learned Sessions Judge, Anantnag, in his order dated 11.08.2022, while accepting recommendation of the UTRC, observed that the petitioner is 72 years old and, as such, he falls under category No.16 of the “Campaign under release UTRC@75”.

6) It seems that the aforesaid order came to be extended from time to time until on 22.09.2023, the learned Sessions Judge withdrew the aforesaid concession to the petitioner and directed that he should be taken into custody. The impugned order dated 22.09.2023 is reproduced as under:

“Accused present . None of the witness of the prosecution present. Prosecution seeks time. Time is granted. Put up on 30.10.2023.

In application for bail interim bail was granted vide order dated 22.08.2022 on the recommendations of UTRC. The accused is involved in commercial quantity of Heroin. The bail is barred under section 37 NDPS Act. The application for bail as such is dismissed. He be kept in Judicial Lock up. The application shall form part of the main file.”

7) There is no dispute to the fact that the petitioner is aged about 75 years and there is also no denial to the fact that as per the report issued by the National Legal Services Authority under “Campaign for the release of

prisoners by UTRC to commemorate 75th Independence Day of India, the undertrials who are above 65 years of age are eligible to be considered for their release on bail. The objective of the campaign is to decongest the jails and for this purpose, the UTRC has been given the task to examine the cases of undertrial prisoners and the convicts who fall under sixteen categories enumerated in the scheme. The Committee, which is headed by the Principal District & Sessions Judge, examined the case of the petitioner and found it appropriate to release him on interim bail despite the fact that he was involved in a case relating to possession of commercial quantity of contraband.

8) The question that arises for determination is whether recommendation made by the UTRC, which has been considered by the Principal Sessions Judge, Anantnag, on judicial side, whereafter he has exercised his discretion to grant bail to the petitioner, could have been casually interfered with by the Principal Sessions Judge, Anantnag, by passing the impugned order.

9) The answer to the aforesaid question is a firm 'no'. Simply by recording that the bail could not have been granted because of the bar contained in Section 37 of the NDPS Act and without assigning any other reason as to why the discretion exercised by the Court on the basis of the recommendation made by the UTRC is required to be interfered with, the concession of bail granted to the petitioner could not have been withdrawn.

10) The fact that the petitioner is involved in a case which attracts bar under Section 37 of the NDPS Act was duly considered by the Sessions Judge while passing order dated 11.08.2022. The criteria for granting bail to a senior citizen in terms of the scheme is not linked to severity of the offence or any legal or statutory bar. This is clear from a perusal of the scheme. Once the learned Sessions Judge had exercised his discretion to grant bail to the petitioner on the basis of the recommendations of the UTRC, subsequently the same could not have been interfered with by the learned Sessions Judge by passing a cryptic order without assigning any cogent reason for disregarding the recommendation of the UTRC. It appears that prior to passing of the impugned order, the learned Sessions Judge has not even put the petitioner to notice and the concession of bail granted to him has been withdrawn abruptly. Such a course of action cannot be countenanced in law.

11) It is a settled law that the concession of bail once granted to an accused cannot be lightly withdrawn. It can be cancelled/withdrawn only if there exist the grounds for doing so. If the learned Sessions Judge was of the view that the petitioner has either violated any of the conditions of the interim bail or that the material on record warranted withdrawal of the interim bail in spite of the recommendations of the UTRC, the same should have been recorded in the order. Without undertaking such an exercise and without referring to any material or any circumstance warranting withdrawal of the interim bail, the learned Sessions Judge could not have passed the impugned order, particularly when there was not even an application from the prosecution seeking cancellation of the bail.

12) For the forgoing reasons, the impugned order dated 22.09.2023 passed by the learned Sessions Judge, Anantnag, is set aside and the petitioner is directed to be released on bail subject to the conditions contained in order dated 11.08.2022 passed by the learned Sessions Judge, Anantnag. It shall be open to the learned Sessions Judge to consider the matter afresh in the light of the observations made hereinbefore, after affording opportunity of hearing to the parties.

**(SANJAY DHAR)
JUDGE**

Srinagar
27.12.2023
“Bhat Altaf, PS”

Whether the order is reportable: Yes/No