

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

CrIA (D) No. 31/2023

UT of JK through SHO PS Bomai Sopore ...Petitioner(s)/Appellant(s)

Through: Mr. Mubeen Wani, Dy. AG

Vs.

Vikas Ahmed Ganie and Another ...Respondent(s)

Through: Mr. Wajid Haseeb, Advocate

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE MOHAMMAD YOUSUF WANI, JUDGE

ORDER
20.04.2024

1. The present appeal has been filed by the appellant which is the Union Territory of Jammu and Kashmir through police station Bomai Sopore in FIR No. 90/2018 inter alia for offences under the UAPA. The case of the prosecution against the respondents is that the respondents were caught red handed on 7/11/2018 along with arms and ammunition and that the recovery itself showed the involvement of the accused in anti national activities. An objection was also raised by the prosecution during the hearing of this bail appeal before they learned court below that out of 9 listed witnesses only 5 have been examined and the person who have been examined have corroborated the allegations against the accused and as such the respondents herein do not deserve any leniency.

2. The learned court below while allowing the application for bail has given its findings from paragraph 16 of the impugned order.

The learned court below has observed that at the time of passing

of the order granting bail, 8 out of the 9 prosecution witnesses have already been examined. The learned counsel for the appellant-UT has argued that the 9th witness is the Investigating Officer in this case and he has yet to be examined and, therefore, the bail order is bad in law as it has not awaited the examination of the most material witness, being the Investigating Officer. He has also argued that the learned court below fell into grave error in appreciating the evidence on the grounds of its reliability as that ought to have been done only at the stage of final hearing and passing of the judgment.

3. *Per contra*, learned counsel for the respondents has argued that the order passed by the learned court below is just and proper and it has appreciated the factual aspects of the case to arrive at the conclusion before granting bail. As regards the argument put forth by the learned counsel for the appellant-UT, that the learned court below fell into grave error in appreciating and analyzing the evidence at the stage of deciding a bail application is concerned, learned counsel for the respondents has submitted that in a case where they were only 9 witnesses out of which 8 have been examined, the Trial Court was justified at the stage of granting bail to appreciate whether the testimonies of the witnesses before the Trial Court satisfied the bar of Section 43D prohibiting the learned court from granting bail. It would be a travesty of justice to expect the Trial Court to be hyper technical and state that it cannot look into the evidence of material witnesses which have already been recorded before it at the stage of granting bail. If the material witnesses have been examined and if their appreciation puts a grave doubt on the prosecution's case, the same not only

may be considered but ought to be considered by the learned Trial Court at the stage of granting bail as incarcerating a person as an under trial has repercussions related to Article 21.

4. The learned Trial Court from paragraph 16 to 18 has peripherally appreciated the statement of the prosecution witnesses and in paragraph 18 has opined that the entire case against the appellant is pivoted upon the search and seizure that was carried out. It has taken into consideration the grave discrepancies with regard to the time at which the search and seizures were made as given by the various witnesses. We do not find any infirmity with this procedure adopted by the learned Trial Court. Therefore, far from being perverse or unreasonable, we are of the opinion that the order passed by the learned court below granting the respondents bail in the facts and circumstances of this case, are just and proper.

5. In view of what has been stated hereinabove, the appeal is, accordingly, dismissed.

(MOHAMMAD YOUSUF WANI) (ATUL SREEDHARAN)
JUDGE JUDGE

SRINAGAR:

20.04.2024

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