NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6211 of 2017

- Peer Arshid Iqbal @ Ashu S/o Peer Gayasuddin, Aged About 38 Years R/o Near Nur Masjid, Nur Khawajabad, (Khawaja Bagh), Police Station Baramulla, District Baramulla, Jammu & Kashmir,

---- Applicant

Versus

- State of Chhattisgarh Through Station House Officer Police Station Civil Lines, District Bilaspur Chhattisgarh.

---- Respondent

For Applicant	:	Ms. Meena Chaudhary Sharma, Advocate with Shri Ashutosh Shukla and Shri Akkash Bhadana, Advocates
For Respondent-State	:	Shri Ashish Shukla, GA for the State

Hon'ble Shri Justice Goutam Bhaduri

C A V Order

(Judgment Reserved on 27.11.2017)

(Judgment Delivered on 29.11.2017)

1. This is the First Bail Application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicant who has been arrested on 23.08.2017 in connection with Crime No.288/2017 registered at Police Station Civil Lines, District Bilaspur (CG) for the offence punishable under Sections 121A, 122, 123, 120B, 201, 34 of the I.P.C.

2. As per the prosecution case, certain heavy monetary transactions were traced in account of the co-accused and frequent withdrawal and deposits were spotted. Consequently, one of the co-accused when was

apprehended and on enquiry, it was revealed that different money were rooted through in the bank account at the instance of one Rajjan Tiwari and others, who were apprehended by the ATS, M.P. Consequently, the investigation revealed that the said Rajjan Tiwari with other co-accused used to collect the different secret army information about the military camp and used to take photographs, which were handed over to the Pakistany agents and thereby top secret information of our nation were being passed on in lieu of money. During such investigation, it also revealed that Rajjan Tiwari met with one Vikram Namdeo & Rajkumar Namdeo and different Bank accounts were opened, who were in touch with the Pakistany Agent Daud and the money which were being received from the outside were deposited in different accounts by deducting the commission. The entire network was operating at different cities of India. It is alleged that the present applicant in furtherance of such used to export the goods were inflated in value and also the imported goods were inflated in value to raise the Indian currency and the goods were exchanged over self valuation in route to Pathankot to Kashmir and Pakistan Occupied Kashmir (hereinafter referred to as 'POK'). The trucks were operating under Nazir & Co., which were managed by the present applicant. One Akram & Irfan of Pakistan used to inform the amount which was being sent by them, therefore, by projecting the business policy, the present applicant used to receive 1 to 1.5 Lakhs from each truck and in turn the money raised by such means were given to the terrorists and the stone pelters at Kashmir. It was further the case of the prosecution that the present applicant used to under value his goods which were being exchanged as against the goods which were received from the POK thereby inflated value of the goods were being encashed for distribution of money. So the applicant along with the other co-accused used to wage war against the nation under the garb of doing business. Thereby the offence has been committed.

3. Learned counsel for the applicant submits that the present is a case of human rights violation, since the applicant who was in business without any evidence has been inculpated. It is stated that according to the prosecution if the amount of 1 to 1.5 Lakhs was being raised from each truck, it would show that the entire money was being used as a payment of tax, commission of applicant and payment of toll tax and after deducting his remuneration nothing can remain in his hand. It is further submitted that in such case if the entire quantum of money if was distributed then it is highly improbable that the applicant will continue business. The counsel would further submit that the allegations leveled against the applicant is only on the basis of the statement of one of the co-accused, who is an illiterate and in the memorandum nothing incriminating facts have been recovered which would connect the applicant with the offence. It is further submitted that the document which has been filed along with the bail application would show that the entire monetary transaction has been placed to show that the applicant was very much in the business, for which he was legally entitled. It is therefore submitted that the applicant is a trader and all the money has been accounted. She would further submit that the charge-sheet in this case has been filed and she would place reliance on the judgment of **Sanjay Chandra Vs. Central Bureau of Investigation**[1], and would submit that under the circumstances no purpose would be served to keep the applicant in jail, therefore, he may be enlarged on bail.

1 (2012) 1 SCC 40

4. Per contra, learned State counsel vehemently opposes the prayer for grant of bail. He would submit that initially the charge-sheet was filed on 09.07.2017 and 7 accused were arrested and there are as many as further 18 absconding accused, out of them 3 are Pakistani nationalists, who were involved in the case. It is submitted that the applicant was absconding and through the surveillance of the mobile he was arrested. Therefore, if the applicant is released, he may also flee away from the country, therefore, he may not be enlarged on bail. It is further submitted that the investigation is still going on and the further incriminating evidence may be recovered and if the applicant is released, the entire those evidence may be done away with him. Consequently, the applicant may not be enlarged on bail.

5. Perused the document. The charge-sheet in this case has been filed. The memorandum statement of one Abdul Jabbar would reveal that the goods were being sent through the root of Pathankot to Jammu and the goods were not sent through Amritsar to Lahore as the custom duty was attracted, subsequently, the goods were sent through the root of Baramulla to Pakistan, since free trade is allowed in between Kashmir & POK. He further stated that every truck was being sent after he received instructions from Akram & Irfan and were being sent through the present applicant Peer Arshid Iqbal @ Ashu. it is stated that he used to receive instructions through Whatts App calling. Thereafter the money, which was generated and received herein was being distributed to the I.S.I. Agents and other persons who were working against the nation and also money was given to the persons to pelt stone over the security forces. The memorandum statement would further reveal that few of the I.S.I. Agents were caught after the demonetization slump in business started,

therefore, he met one Irfan and Akram at Dubai to plan out how to help out the I.S.I. He further stated that he received the amount at different point of time and thereafter had handed over to the present applicant, who in turn distributed the same for anti national activities. Likewise, statement of one Bilal Ahmad Mir would show that he used to receive the amount of 1 to 1.5 Lakhs in cash, the said amount was given to the present applicant, who in turn used to give the same to the stone pelters at Kashmir.

6. The memorandum statement of the present applicant is also seen. Which also shows that the present applicant used to under value the goods, which were being sent from India to POK and the goods which are in exchange came to India after selling the same the money was used to be distributed to the I.S.I. Agents and the militants and the stone pelters. It is further stated that apart from that he has used the different mobile nos. to make fake calls to the persons to deposit by allurement of price and the money in different accounts so received were to be used for the purpose against the nation.

7. Taking into the nature of allegation, which is existing and the fact that the applicant was absconding initially and was traced after surveillance of his mobile, the apprehension of the applicant of fleeing away cannot be denied. The fact that the 18 other accused persons are still absconding also looms large to support the fact that the applicant if is released may flee away, especially in view of the background of the offence. Nature of allegation which is existing and the confessional statement of the co-accused cannot be ignored at the stage of bail. The preposition is also supported by the ratio laid down by the Supreme Court in the matter of ***Muraleedharan Vs. State of Kerala {AIR 2001 SC 1699}***, therefore,

taking into the totality of the matter, I am not inclined to allow this bail application. Consequently, the same is dismissed.

Sd/-
Goutam Bhaduri
Judge

Ashu