IN THE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

(THROUGH VIRTUAL MODE)

Bail App No.100/2020
Bail App No. 92/2020

Arun Khajuria
Vinay Kumar alias Bini Kumar

... Petitioner(s)

Through: - Mr. Prince Khanna, Advocate.
Ms. Aparjita Jamwal Advocate

Vs.

Union Territory of J&K and another

....Respondents

Through: - Mr. Aseem Sawhney AAG

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

ORDER

1 Petitioners Arun Khajuria and Vinay Kumar alias Bini Kumar have moved two separate petitions for grant of bail in a case arising out of FIR No. 1/2019 for offences under Sections 302/201/109 RPC.

2 It is the case of the petitioners that as per the chargesheet lodged by the investigating agency against them before the learned trial Court, only offences under Sections 201/109 RPC have been found established against them, whereas offences under Sections 302/201/109 RPC stand established against the other co-accused. On this ground, it is urged by the petitioners that they are entitled to be enlarged on bail for the reason that the offence under Section 201 RPC is bailable in nature.

3 From a perusal of the record of the trial Court, it has come to fore that the learned trial Court had, at the time of considering the question of framing of charge(s) against the petitioners/accused, vide its order dated 06.02.2020, instead of determining the question as to whether or not the charges are made out against the petitioners/accused, directed the investigating agency to conduct further investigation in the case after constituting a Special Investigating Team. It was directed by the learned trial Court that the investigating agency shall conduct the test identification parade of the accused and collect CDR of the cell phones of the accused. As per the directions of the learned trial Court, further investigation was to be completed within a period of one month.

4 During the pendency of these bail applications, status report pertaining to stage of further investigation was called from the respondents and the same has been received. As per the said status report, neither the test identification parade of the accused could be conducted, nor the CDR of the cell phones of the accused could be obtained.

5 For deciding the instant bail applications, it is necessary to analyse the chagesheet and the material annexed thereto. Besides this, the issues, whether the investigating agency has conducted the further investigation of the case in accordance with the directions of the learned trial Court and whether or not, in the light of the status report filed by the investigating agency, the further investigation of the case has reached a dead end, would also crop up. If the aforesaid exercise is undertaken by this Court at this stage, it may prejudice the case of the

parties before the trial Court at the time of consideration of question of framing of charges. Therefore, it would be appropriate that bail applications of the petitioners are considered by the learned trial Court in the light of the material which is presently available before it. The leaned trial Court would do well to consider the question of framing of charges along with the bail applications.

6 In the light of what has been discussed hereinbefore, the petitioners are directed to approach the learned trial Court for grant of bail. The learned trial Court shall consider the bail applications of the petitioners as well as the question of framing of charges in the light of the material available before it and pass appropriate orders in accordance with law. The above exercise shall be concluded by the learned trial Court expeditiously preferably within fifteen (15) days of presentation of bail petitions before it.

Both the petitions stand disposed of in the above terms.

Copy of this order be sent to the learned trial Court for information and compliance.

(SANJAY DHAR)
JUDGE

Jammu
16 .12.2020
"Sanjeev, PS"

Whether the order is speaking: ***Yes***
Whether the order is reportable ***Yes/No***

SANJEEV KUMAR UPPAL
2020.12.22 13:39
I attest to the accuracy and
integrity of this document