IN THE HIGH COURT OF JAMMU AND KASHMIR AT JAMMU
(THROUGH VIRTUAL MODE)

Bail App No.172/2020

Reserved on: 30.12.2020
Pronounced on:31 .12.2020

Darshan Singh ... Petitioner(s)

Through: - Mr. Atul Raina Advocate

Vs.

Union Territory of J&K th. P/S Ghagwal, Samba

…Respondent(s)

Through: - Mr. Aijaz Lone Dy.AG

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

JUDGMENT

1 On the basis of an information received from the reliable sources to the effect that a Canter bearing Registration No. PB65AU/0634 loaded with suspected drugs was proceeding from Srinagar towards Punjab, FIR No. 45/2020 for offences under Sections 8/15 NDPS Act came to be registered by the Police of Police Station, Ghagwal, Samba. Accordingly, a Naka was laid and the vehicle in question was stopped at Tapyal. Upon its search, it was found to be loaded with 18 Kgs and 800 gms of poppy straw. The vehicle was being driven by the petitioner herein. The sample of the recovered poppy straw was sealed and sent to FLS for chemical examination. Upon receipt of the report of the FSL and completion of investigation, offences under Sections 8/15 NDPS Act were found established against the petitioner and challan was filed

before the Court of learned Principal Sessions Judge, Samba against the petitioner.

2 It appears that the petitioner had filed an application for grant of bail in his favour in the aforesaid FIR before the Court of Principal Sessions Judge, Samba and the same was rejected by the said Court vide its order dated 21.08.2020. Being aggrieved of the said order, the petitioner has filed the instant petition before this Court for grant of bail in his favour on the grounds that the contraband allegedly shown to be recovered from the possession of the petitioner is an intermediate quantity, as such, the rigor of Section 37 NDPS Act will not apply to the present case; that the challan has already been produced before the trial Court, therefore, there is no chance of petitioner tampering with the investigation of the case and that the petitioner is ready to abide by all terms and conditions that may be imposed by the Court in the event of grant of bail in his favour.

3 The respondent has resisted the bail petition by filing its reply thereto. In its reply, the respondent has contended that 18 Kgs and 800 gms of poppy straw has been recovered from the possession of the petitioner/accused; that on the basis of evidence collected during the course of investigation, offences punishable under Sections 8/15 of NDPS Act were found established against the petitioner/accused; that the petitioner/accused is involved in commission of non-bailable offence under the NDPS Act as intermediate quantity of contraband has been seized from his possession, as such, he does not deserve the concession of bail at this stage.

4 I have heard learned counsel for the parties and perused the record.

5 As already noted, in the instant case, learned Principal Sessions Judge, Samba, has rejected the bail petition of the petitioner. The question that arises for consideration is whether or not successive bail applications will lie before this Court. The law on this issue is very clear that if an earlier application was rejected by an inferior court, the superior court can always entertain the successive bail application. In this behalf, I am supported by the ratio laid down by the Supreme Court in the case titled **Gurcharan Singh & Ors vs. State (Delhi Administration), AIR 1978 SC 179** which has been followed by the Bombay High Court in the case of **Devi Das Raghu Nath Naik v. State,(1987 Crimes Volume 3 page 363).**Thus, the rejection of a bail application by Sessions Court does not operate as a bar for the High Court in entertaining a similar application under Section 439 Cr. P. C on the same facts and for the same offence.

6 Coming to the order of the learned Principal Sessions Judge, Samba, whereby the application of the petitioner for grant of bail has been rejected. It seems that severity of punishment and seriousness of offence alleged to have been committed by the petitioner has weighed with the learned Sessions Judge while rejecting the bail application of the petitioner. According to the learned Judge, the offence alleged to have been committed by the petitioner is serious in nature and the same affects the society in general and the young generation in

particular and for this reason, bail application of the petitioner has been rejected.

7 There is no dispute to the fact that the quantity of contraband recovered from the possession of the petitioner does not fall within the parameters of commercial quantity and that the same is an intermediary one. The rigour of Section 37 of NDPS Act, therefore, is not attracted to the instant case. The bail petition of the petitioner is, as such, required to be considered on the touchstone of the principles governing grant of bail under Section 437 of Cr. P. C.

8 It is a settled position of law that grant of bail is a rule whereas its refusal is an exception. The question whether bail should be granted in a case has to be determined on the basis of the facts and circumstances of that particular case. A Coordinate Bench of this Court, while discussing the principles to be followed in a case where intermediary quantity of contraband was recovered from the accused, has, in the case of **Mehraj-ud-Din Nadroo and others Vs. State of J&K (BA No.74/2018 decided on 07.07.2018),** observed as under:

> *"The settled position of law as evolved by the Supreme Court in a catena of judicial dictums on the subject governing the grant of bail is that there is no strait jacket formula or settled rules for the use of discretion but at the time of deciding the question of "bail or jail" in non-*
>
> *bailable offences. Court has to utilize its judicial discretion, not only that as per the settled law, the discretion to grant bail in cases of non-bailable offences has to be exercised according to rules and principle as laid down by the*

Code and various judicial decisions. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses, if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-

convicted person for the purpose of giving him a taste of imprisonment as a lesson".

09 In the light of the afore-quoted principles, let us now advert to the facts of the instant case. As already noted, the quantity of contraband allegedly recovered from the accused does not fall within the parameters of 'commercial quantity' and in view of the same is intermediary one. The rigour of Section 37 of the NDPS Act, thus, does not come into play. The observation of learned trial court, while rejecting the bail application of the petitioner that the offence alleged to have been committed by the petitioner is serious in nature and the same affects the society in general and the young generation in particular, cannot be the sole reason for rejection of the bail application, particularly when the allegations are yet to be established. Allowing the petitioner to remain in custody because of the reason that the offences alleged to have been committed by him are serious in nature, would amount to inflicting pre-trial punishment upon him. Every person is presumed to be innocent unless duly tried and duly found guilty. Withholding of bail cannot be as a measure of punishment. The petitioner has been arrested on 14.05.2020 and since then, he is in custody and his further incarceration will be nothing but imposition of punishment without trial of the case. Therefore, a balanced view of the matter is required to be taken by enlarging the petitioner on bail.

10 Apart from this, the respondents have not placed on record anything to show that the petitioner is habitual offender or that he has previously been either implicated or convicted of similar offences. It is not the case of the respondents that any further recovery is to be effected from the petitioner. As per the status report filed by the

respondents, the challan has already been filed before the trial Court. Thus, further incarceration of the petitioner in the instant case cannot be justified. If the petitioner is not enlarged on bail, it may also have an adverse impact on his preparation of defence against the charges that have been laid against him before the learned trial Court. The discretion regarding grant or refusal of bail cannot be exercised against the petitioner on the basis of public sentiments or to teach him a lesson as his guilt is yet to be proved.

11 For the foregoing reasons, the petition is allowed and the petitioner is admitted to bail subject to the following conditions:

(i) That he shall furnish personal bond in the amount of Rs.1.00 lac with one surety of the like amount to the satisfaction of the learned trial court;

(ii) That he shall appear before the trial court on each and every date of hearing;

(iii) That he shall surrender his passport, if any, before the learned trial Court;

(iv) That he shall not tamper with prosecution witnesses.

Copy of this order be provided to the learned counsel for the petitioner through available mode and a copy be also sent to the learned trial Court.

(SANJAY DHAR)
JUDGE

Jammu
31 .12.2020
"Sanjeev, PS"

SANJEEV KUMAR UPPAL
2020.12.31 16:17
I attest to the accuracy and
integrity of this document

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