

Suppl. List VC
Sr. No. 03

IN THE HIGH COURT OF JAMMU AND KASHMIR AT
SRINAGAR

Bail Appl. No. 25/2020

Mohammad Tajamul Masoodi

... Petitioner(s)

Through: - Mr. Shakti Gupta, Advocate
with M/s Maninder Kapoor,
Sahil Kohli, Aditya Badiyal
Advocate, (On video
conference from High Court
Jammu)

V/s

UT through Police Station Uri

....Respondents(s)

Through: - Mr. B. A. Dar, Sr. AAG
Ph. No. 9906544708 (on
video conference from his
office)

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge

ORDER
03.06.2020

Objections stand filed, copy whereof shall be supplied to the counsel appearing for the petitioner by e-mail today itself.

The instant application is filed by one Mohammad Tajamul Masoodi S/o Late Bader-ud-Din Masoodi R/o Bagundhar, Nambai-Bal, Pampore, District Pulwama through his brother Mohammad Afzal Masoodi, seeking bail in case FIR No. 54/2017 of Police Station Uri, Baramulla registered under Section 8/21/29 NDPS Act.

Admittedly the trial of the case is pending before the Additional Sessions Judge, Baramulla since 23.11.2017 and petitioner-accused though applied for grant of bail pre-trial, the same stands rejected with the liberty to seek bail on the subsequent material/grounds available with the petitioner-

accused. The petitioner-accused has during the pendency of the trial, filed petition under Section 561-A Cr.PC (now repealed) No. 110/2018 CrMC No. 388/2018 and this Court on the statement made by the counsel appearing for the petitioner disposed of the same with direction to the learned trial Court to hear and conclude the trial of the case expeditiously, preferably within a period of two months and subsequent thereto petitioner had filed bail application No. 108/2019 along with CrIm No. 54/2020, which on withdrawal stands dismissed in terms of order dated 05.02.2020 with liberty to file a fresh, if cause arise.

The present bail application is filed besides the grounds on the ground that the petitioner-accused is a chronic patient suffering from multiple disorders of “Hypertension/focal seizure with major depression panic attacks” “Cardiological problem” and “Stomach problem” and during detention petitioner-accused has also undergone surgery of “Cholesystitis and acute Appendicitis.” The petitioner-accused kept on record the medical evidence. The reports annexed with the application prima-facie substantiate the claim of the petitioner-accused for considering his case on the guidelines issued by the Hon’ble Supreme Court dealing with the grant of interim bail to under-trials who are faced with chronic ailments apprehending Covid-19 attack.

Mr. Shakti Gupta, learned counsel appearing for the petitioner-accused submits that on the directions of the Division Bench of this Hon’ble Court passed in PIL, the Government has been asked to constitute a Committee for examining the nature of the ailments of the under-trials and on the basis of such report, the trial Courts have been further asked to take a view for grant of interim bail.

Mr. B. A. Dar, learned Sr. AAG submits that the petitioner-accused is at liberty to approach the trial Court and seek permissible relief on the guidelines issued by the Hon'ble Supreme Court.

Heard learned counsel for the parties, perused the records and considered the matter.

Mr. Shakti Gupta, learned counsel appearing for the petitioner-accused vehemently argued the matter with reference to the accused being not involved in the case and as per him the available material on record does not disclose the offences registered against the accused-petitioner in the case. He submits that the petitioner-accused has been robbed by the Police on the concocted story as a conspirator when as a matter of fact there is no such material available with the Police and the prosecution case will definitely fail.

While the matter was being heard, it was noticed that the petitioner-accused has not made any effort to approach the trial Court for seeking the benefit of grant of bail after filing of the challan. The observation is made with reference to the trial Court being equipped with the material in the shape of challan/statements of witnesses recorded so far. The trial Court can better appreciate the claim of the petitioner-accused qua grant of interim bail/bail.

In the above background, this Court has decided not to proceed further in hearing of the matter for deciding the bail application on its merits, however, leaves it open for the petitioner-accused to approach the trial Court by tomorrow and in the event the petitioner-accused submits the bail application before the trial Court on the grounds already taken in this bail application with some additionalities, the same shall be registered and considered by the trial Court for its decision after the prosecution is put on

notice. It is made clear that Mr. B. A. Dar, learned Senior AAG shall ensure filing of the objections to the said bail application within a week's time. There is no difficulty for him to file the objections as the prosecution has already taken a stand before this Court. The trial Court shall take up the bail application for final decision in the next week and decide the same at the end of the next week.

Mr. Shakti Gupta, learned counsel appearing for the petitioner-accused is at liberty to have the bail application filed by submitting the same on the e-mail address of the Court below. Registry shall convey the direction of this Court to the Court below during the course of day for ensuring that the bail application, if any, filed by the petitioner-accused by use of e-mail-WhatsApp be registered and decided. Any observation made or finding recorded shall not come in the way of the trial Court to decide the matter on its merits. Needless to mention that the trial Court shall also consider the claim made by the petitioner-accused with reference to suffering from chronic ailments as described and detailed out in the order. The Court below shall ensure consideration of the matter and decision by the mode prescribed in terms of the updated circulars issued by the High Court for functioning of the Courts. It is also made clear that the Court below shall also ensure the hearing of Mr. Shakti Gupta, learned counsel in case such request is made by providing him link.

Disposed of.

Registry to send a copy of order to Additional Sessions Judge, Baramulla, copy whereof shall be furnished to learned appearing counsel for the parties through e-mail.

(Ali Mohammad Magrey)
Judge

Srinagar
03.06.2020
Mohammad Yasin Dar