

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

*Bail Application No. 32/2020
CrlM No. 218/2020*

*Reserved on: 04.06.2020
Pronounced on: 09.06.2020*

Ishfaq Ahmad Wani.

...Petitioner(s)

Through: Mr Imtiyaz Ahmad Sofi, Advocate.

vs

Union Territory of JK through Police Station, Sumbal.

...Respondent(s)

Through: Mr B.A. Dar, Senior AAG.

CORAM:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge.

JUDGMENT

01. By medium of the instant application, filed under Section 497 of the Code of Criminal Procedure, the applicant seeks grant of bail in case bearing FIR No. 03/2020 registered by Police Station, Sumbal, for the commission of offences punishable under Sections 8/22 and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the "NDPS Act").

02. Learned counsel for the applicant submits that in terms of Notification No. S.O. 1055 (E) dated 19th October, 2011, the Central Government has specified the small and commercial quantities for the purposes of NDPS and Entry 28 of the notification specifies 10 grams as small quantity and 01 kilogram as commercial quantity for the Codeine and that the quantity alleged to have been recovered from the applicant herein falls within the small quantity and, as such, rigor of Section 37 of the Act does not apply. It is

pleaded that the quantity alleged to have been recovered from the applicant is miniscule (less than prescribed small quantity), therefore, allegation against the applicant is false and frivolous and lacks material specifications. It is argued that the articles alleged to have been recovered from the car are not consistent with the conscious possession of the same and that the Police have not taken that aspect of the matter into consideration before registering the FIR and no attempt is being made to find out who procured the article or how the articles were placed in the vehicle driven by the applicant.

03. Objections have been filed by the respondents, vehemently resisting the averments made in the application. It is contended in the objections that on receipt of the docket and directions of SHO, case FIR No. 03/2020 under Section 08/22 NDPS Act stands registered in the Police Station and investigation set into the motion. During the course of investigation of the instant case, I/O visited the spot, prepared site plan, seized the contraband 07 bottles of 'SVIZCODIN' (100 ML each Bottle) and Duster Car bearing registration No. DL8CZ/9744 and contraband, 41 Bottles of 'WELCYREX' (100 ML each Bottles) and WagonR Car bearing Registration No. JK02CC/9800, prepared seizure memos of both recovered narcotic and vehicles in question in presence of Gazetted Police Officer (SDPO Sumbal) and recorded statements of material witnesses on spot. On recording of witnesses, seizure effected mentioned above established offences under section 08/22 NDPS Act against all the accused persons, who were arrested on spot and arrest memo in connection with their arrest prepared on spot. During the course of investigation, I.O. produced the seized contraband exhibits before the court of Executive Magistrate 1st Class Sumbal for resealing of the exhibits and taking of samples for forwarding to FSL,

Srinagar, for obtaining chemical analysis/opinion, wherefrom after resealing and sealing of exhibits samples have been submitted to FSL Srinagar on 11th of January, 2020, where from report into the matter is still awaited. Respondents have vehemently insisted that statement of witnesses were recorded under Section 164-A Cr. P.C and during the course of investigation, section 8/20 NDPS Act were proved against accused persons and that accused persons are involving youth of the area in drug abuse.

04. Heard learned counsel for the parties, perused the pleadings on record and considered the matter.

05. Admittedly, the applicant has been arrested on 4th of January, 2020. He, as noted above, has been arrested along with one Sayyar Ahmad, while it being alleged that they were in possession of 07 bottles of 'SVIZCODIN' (100 ml each bottle); meaning thereby that total quantity recovered from them amounted to 700 ml of 'SVIZCODIN'. The learned trial Court, where now the case is stated to be pending, has taken note of societal interests and rejected the bail application filed by the applicant earlier in point of time. The stage on which the case had been at that time may also have been a factor for rejection of the bail application.

06. Nonetheless the fact that the applicant herein is shown to be involved in the commission of offences punishable under Sections 8/22, 29 of the Act, it is the case of the respondents that the recovery allegedly made from the applicant and the accomplice was falling within the ambit of commercial slab. However, in the given circumstances, as can be inferred from the report and the averments of the application and the objections, the quantity so recovered can be said to be falling within the intermediate slab (being below 01

Kilogram/ Litre) and, as such, the rigour of Section 37 of the Act is not attracted. The applicant herein, by now, is in custody for more than five months. It is not the plea of the respondents that he, in past, was involved in any activity of similar nature necessitating bail application to be considered in that backdrop. The stage, of which reference is made in the order of learned Principal Sessions Judge, Bandipora, is not of investigation necessitating further custody of the applicant either for custodial interrogation or otherwise. The applicant, presumably an innocent person, is entitled to prepare his defense and so, in the ends of justice, is required to be admitted to bail. It is already noted that rigour of Section 37 of the Act is not applicable to the case. The merit of application in the light of above facts is to be tested on the touchstone of Section 497 Cr. P. C. Accordingly, I am of the opinion that the applicant has been able to make out a case for grant of bail. This view is fortified by the law laid down by this Court in cases titled '*Firdous Ahmad Gazi v. State of JK*' (2012 (IV) SKJ 1307 (HC)); and '*Bilal Ahmad Lone v. State of JK*' (BA No.134/2018 decided on 14th of February, 2019).

07. In the above background, the applicant is admitted to bail provided he furnishes a personal bond to the tune of Rs. 50,000/ (rupees fifty thousand) before the concerned Jail Superintendent with a surety of like amount to the satisfaction of the Registrar Judicial of this Court, of course, subject to following terms and conditions:

- i. *He shall remain present before the trial Court, as and when asked to do so;*
- ii. *He shall not leave the territorial limits of the trial Court without prior permission; and*
- iii. *He shall not tamper or intimidate the prosecution witnesses.*

08. Bail Application *disposed* of as above, alongwith the connected CrlM.

09. Registry to send a copy of this order to the Court below as also to the concerned Jail Superintendent for ensuring compliance, copy whereof shall be furnished to the learned counsel for the parties through *e-mail*.

(Ali Mohammad Magrey)
Judge.

SRINAGAR;

09.06.2020

"Hamid"

<i>Whether approved for reporting in Press/ Media?</i>	<i>YES/NO.</i>
<i>Whether approved for reporting in Digest/ Journal?</i>	<i>YES/NO.</i>