

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

EMG-CrIA(D)No.19-A/2020

Mohammad Iqbal Bhat ...Petitioner(s)/Appellants

Through: Mr. Bilal Ahmad Khan, Advocate (through WhatsApp
Call from his residence)

V/s

Union Territory of J&K & Ors. ...Respondents

Through: Mr. Mir Suhail, AAG (through WhatsApp Call from his
residence)

CORAM: **Hon'ble Mr Justice Dhiraj Singh Thakur, Judge.**
Hon'ble Mr. Justice Sanjay Dhar, Judge.

(JUDGMENT)

Per Thakur 'J'

1. This is an appeal against the order dated 16th of April, 2020 passed by the Court of Special Judge (Designated Court under NIA) Additional Sessions Judge, Anantnag.

2. Briefly stated, the material facts are as under:

“An application for grant of bail came to be preferred by the appellant before the Court Special Judge (Designated Court under NIA) Additional Sessions Judge, Anantnag, through Virtual Mode (WhatsApp) in regard to FIR No.107/2018 registered with Police Station D. H. Pora under Sections 153 RPC, 13 ULA(P) Act and 2 PINH Act. The allegation against the appellant appears to be that he had instigated people for joining militant organization and also raised slogans against the integrity of the Country during the time when the

last rites of a militant, namely, Amir Tantray, who was killed during an encounter at Arwani Bijbehara, were being performed. By virtue of order impugned dated 16th of April, 2020, the court below has dismissed the application and hence the present appeal.”

3. Counsel for the appellant urged that the order on the face of it suffered from non-application of mind, inasmuch as the court below had failed to apply the correct principles which should have been borne in mind for purposes of deciding whether bail ought to be granted or not.

4. On a perusal of the order impugned, it can be seen that the main reason for rejection of the prayer for grant of bail of the appellant, which weighed with the court below, was that the matter with regard to the grant of bail was not an urgent matter and further that in view of the lockdown enforced in the Union Territory, the boundaries of all the districts had been sealed. The Court below, therefore, was of the view that even if the appellant was released on bail, it would not be possible for him to reach the destination without risking his life due to the outbreak of the Covid-19. Not only this, the court observed that in such a situation, it would be in the interests of the appellant to remain in custody till completion of the lockdown period which would not only save his life but also the lives of others. The court also emphasized that it was concerned with saving the lives of the people, be it prisoners or public, and that by not entertaining the bail application during this period, the court would strengthen and maintain social distancing, which was the real need of the hour.

5. Although the court below has suggested that the investigation of the case was at the initial stage and that granting bail would hamper investigation

in the case and that the appellant did not succeed in establishing any ground for his release at that stage, yet in our view the said observation made in the order impugned is only a passing observation without elucidating, in the least, the reason as to how the appellant had failed to make out a case for grant of bail at that stage..

6. Having heard counsel for the parties, we are satisfied that the view expressed by the learned Special Judge designated under NI Act is not one order which can be sustained in law as the reasons for rejecting the bail are far removed from the established principles of law which are supposed to be followed for purposes of granting bail. Bail could not have been refused with a view to protect life of a person seeking bail on account of Covid-19 nor can the issue of Covid-19 be made the basis for refusing bail for protecting lives of others. Needless to say, that the reasoning and logic advanced in the order impugned is nothing but perverse. We, accordingly, set aside the order impugned dated 16th of April, 2020, and direct the court below to pass orders afresh after hearing the parties.

7. Counsel for the parties agree that they shall appear before the court below on 19th of May, 2020 and the said court thereafter shall finally decide the matter preferably within a period of ten days.

8. Copy of this judgment be sent to the trial court through available mode for information and compliance.

SD/-
(Sanjay Dhar)
Judge

SD/-
(Dhiraj Singh Thakur)
Judge

Srinagar
15.05.2020
"Bhat Altaf, PS"