

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

.....
Bail App. No. 09/2020
CrIM No. 51/2020

Reserved on:18.03.2020

Pronounced on:17.04.2020

Showkat Ahmad Parray

...Petitioner(s)

Through:Mr. M. I. Dar, Advocate

Versus

U.T. of J&K through Director General of Police and others

...Respondent(s)

Through:Mr. Sheikh Feroz, Dy. AG

CORAM: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGEMENT

1. This is an application under section 497 of the Code of Criminal Procedure, filed by applicant seeking grant of bail in case FIR no.03/2020 under section 8/22 and 29 of NDPS Act registered in Police Station Sumbal, Bandipora. It is also contended in application that Presiding Officer, i.e. Principal Sessions Judge, Bandipora, is on leave, therefore applicant filed the instant application. Applicant seeks bail primarily on the ground 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. The quantity alleged to have been recovered from the applicant falls within small quantity and as such rigor of Section 37 of NDPS does not apply. The quantity alleged to have been recovered is miniscule (less than prescribed small quantity), therefore, allegation against the applicant is false and frivolous and lacks material specifications. It is submitted the applicant is entitled to grant of bail. It is, however, pleaded by the petitioner/applicant in the application that articles are

alleged to have been recovered from the car is not consistent with the conscious possession of the same and the police have not taken that 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 back seat of the vehicle driven by the petitioner/applicant.

2. Objections have been filed by the respondents, vehemently argued and resisted the application. It is contended in the objections that on receipt of this docket and directions of SHO, case FIR No. 03/2020 u/s 08/22 NDPS Act stands registered in this 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 Regd No. JK02CC/9800, prepared seizure memos of both recovered narcotic like a drug and vehicles in question in presence of gazette police officer (SDPO Sumbal) and recorded statements of material witnesses on spot. On recording of witnesses, seizure effected mentioned above established offences u/s 08/22 NDPS Act against all the 04 accused persons mentioned above, 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 11.01.2020, where from report into the matter is still awaited. Respondents have vehemently insisted that statement of witnesses were recorded under Section 164-A Cr.PC and during 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. The investigation was produced in the matter.
3. Heard learned counsel for the parties.

4. Learned counsel for the petitioner has argued that while registering the FIR against applicant, the police concerned has not complied with the admissible provisions of the Act and Rules. He is innocent and has not committed any offence. He has further submitted that the police concerned have seized the contraband in breach of mandatory provisions of the Act. It is submitted by the learned counsel for the petitioner/applicant that applicant has earlier filed an application for bail before the Chief Judicial Magistrate, Bandipora, however, the Chief Judicial Magistrate, Bandipora rejected the bail application on 28.01.2020 due to lack of jurisdiction to entertain the case. Learned counsel to augment his submissions, has placed reliance on *E. Michael Raj v. Intelligence Officer, Narcotic Control Bureau, (2008) 5 SCC 61; Union of India v. Niyazuddin SK &anr, 2018 (1) Drugs Cases (Narcotics) 284; and Rajvir Singh @ Raju v. State of Punjab, 2018 (3) LawHerald 2448.*
5. On the other hand, learned counsel for respondents has insisted that petitioner is involved in heinous offences and, therefore, does not deserve to be released on bail. It is also contended that recovery is commercial quantity.
6. As is discernible from the file, on 04.01.2020 at about 18:40 hours Constable, namely, Javeed Ahmad No. 988/BPR deputed for escort duty with SHO Police Station, Sumbal produced written docket on behalf of SHO for lodging a report to this effect that SHO along with the escort party Ct. Javeed Ahmad No. 988/BPR, Sgct Ab Qayoom No. 590/BPR, Ct. Mohammad Yaqoob No. 488/BPR, Ct. Mohammad Ashraf No. 971/BPR while on patrolling/Naka checking in the JD of P.S Submal. During patrolling at near irrigation colony gate Sumbal, he along with escort party was conducting checking of vehicles. While checking of vehicles at about 1830 hours, one Duster Car bearing registration No. DL8CZ/9744 and another one WagonR Car bearing Registrationno. JK02CC/9800 were coming from Sumbal towards Hajin Naidkhai were stopped for checking. On questioning the driver of the vehicle Duster disclosed his name as Sayar Ahmad Sheikh R/o Shulwat Sumbal and another seated person in vehicle disclosed his name as Ishfaq Ahmad Wani R/o

TangporaSurrbal. On checking of said vehicle, Contraband, 07 Bottles of SVIZCODIN (100 ML each Bottle) was found in the dash board of the said vehicle. Moreover, the driver of the vehicle WagonR Car disclosed his name as Showkat Ahmad Parray S/o Ab. Salam Parray R/o WangiporaSumbal and another seated person in vehicle disclosed his name as Khursheed Ahmad Wani S/o Gh. Mohammad Wani R/O ShulwatSumbal and on checking of the said vehicle WagonR, Contraband, 41 Bottles of WELCYREX (100ML each Bottle) was found in the rear seat (left side seat) of the driver in a tray from the said vehicle. It is also the case of the police that all the four accused persons were carrying this Contraband for selling it among the youths of the area on demanded rates ad are involving the youths in drug abuse. Therefore, omission and commission of the above persons prima facie established offences u/s 08/22 NDPS Act on sport etc. The docket is submitted through Ct. Javeed Ahmad No. 988/BPR with the directions that FIR be registered in this regard. Accordingly, on receipt of the docket, and on directions of SHO, case FIR No. 03/2020 u/s 08/22 NDPS Act has been registered in the Police Station and investigation set into the motion. During the course of investigation of the instant case I/S visited on 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 Bottle) and WagonR Car bearing Regd No. JK02CC/9800, prepared seizure memos of both recovered narcotic like a drug and vehicles in question in presence of gazette police officer (SDPO) Sumbal) and recorded statements of material witnesses on spot.

7. While considering a bail application, what is required to be seen is prima facie involvement of a particular accused connecting him with commission of alleged offence and its gravity or seriousness. Chances of tampering with evidence can also be a very valid ground for rejecting or accepting bail application and at the same time, the Court has also to ensure that there should not be any hindrance in free, fair and just investigation of a case and/or of a trial.

8. The principles, generally governing grant of bail are relatable to following things:
- i. seriousness of the allegations; severity of punishment; the character of evidence on which the charge is proposed to be sustained; possibility of tampering and intimidating the witnesses; and chances of running away from the trial.
 - ii. false implication of the accused; allegations levelled not believable; and wreaking vengeance for political or business reasons.
9. Before granting any concession of bail, above referred to principles are to be kept in mind while exercising discretionary jurisdiction. It is also to be noted that at the stage of considering an application for grant of bail, the Court has only to go into limited question as to whether a prima facie case is established against the accused. It cannot go into evidentiary value, credibility and reliability of witnesses. However, while examining a bail plea of accused, the circumstances, under which crime is alleged to have been committed, the character and behaviour of the accused person are also to be examined. Qua present case, during investigation, serious allegations punishable under Section under section 8/22 and 29 of NDPS Act, have been made against applicant/accused.
10. It is well settled that the matters to be considered in an application for grant of bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) likelihood of the offence being repeated; (vi) reasonable apprehension of the witnesses being tampered with; and (vii) danger, of course, of justice being thwarted by grant of bail. While a vague allegation that accused may tamper with evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. (Vide: *State of U.P. through CBI v. Amarmani Tripathi, reported in (2005) 8 SCC 21; Prahlad Singh Bhati v. NCT, Delhi and*

Gurcharan Singh v. State Delhi Admn., (2001) 4 SCC 280; and *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528].

11. The law qua grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merit of the case, need not be undertaken, yet there is a need to indicate in such orders reasons for prima facie concluding why bail is being granted, particularly where accused is charged of having committed a serious and/or heinous offence. Any order, devoid of such reasons, would suffer from non-application of mind.
12. It is also necessary for the Court, granting bail, as has been indicated by the Supreme Court in *Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas*, (2002) 2 SCC 598, to consider, *inter alia*, the following factors as well before granting bail; which are:
 - i. The nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence.
 - ii. Reasonable apprehension for tampering with the witness or apprehension of threat to the complainant.
 - iii. Prima facie satisfaction of the court in support of the charge.
13. Insofar as the present case is concerned, it relates to alleged seizure of contraband from the possession of applicant and punishment for such activity falls under the provisions of Narcotic Drugs and Psychotropic Act, 1985 (for short "*Act of 1985*"). It is an Act of the Parliament of India, aiming at to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for matters connected therewith.
14. Reliance on judgements by learned counsel for petitioner would not render any assistance to the case of applicant, more particularly when

the judgement rendered in the case of *E. Michael Raj's* (supra), had not found favour with the subsequent Bench of the Supreme Court itself and therefore applicant cannot take advantage of that judgement. Besides, judgment in the case of *E. Micheal Raj* was rendered prior to insertion of Note 4 in the Table at the end of Note 3 of the NDPS Act which was done by the Central Government vide S.O.2941(E) dated 18.11.2009. That apart the issue as to whether the law laid down in the case of *E. Micheal Raj* (supra) is *per incurium* and what is the effect of subsequent notification issued by the Central Government is subject matter of adjudication in the reference in *Hira Singh v Union of India (2017) 8 SCC 162*. Without going much into the question of law raised by the learned counsel for the petitioner, it would be sufficient to say that in absence of clear findings/report of FSL it is not possible for this Court at this stage to find out as to what is quantum of Narcotic/Psychotropic substance in the seized contraband. The report of the FSL is yet to be received and therefore, it would be premature to arrive at any conclusion. It is because of this reason that this Court is not inclined to examine the issue raised by the petitioner at this stage.

15. Therefore, in totality of circumstances and for reasons discussed herein above, I am not inclined to grant bail to petitioner/applicant at this stage. However, if there is any change in the circumstances, hemaymove appropriate court at appropriate stage for grant of concession of bail in his favour. This bail application is, accordingly, **dismissed.**

(TashiRabstan)
Judge

Srinagar

17.04.2020

Imtiyaz

Whether approved for reporting? Yes/No