

**HIGH COURT OF JAMMU AND KASHMIR**

**AT JAMMU**

(Through Virtual Mode)

EMG-Bail Appl. No. 14/2020

EMG-CrIM No. 14/2020

Reserved on:- 28.05.2020

Pronounced on:-15.06.2020

Mohd. Toyab

...Applicant

Through :-Mr. Sunil Sethi, Sr. Advocate with  
Mr. Waheed Choudhary, Advocate

v/s

UT of Jammu and Kashmir and others

...Non-applicant(s)

Through :- Mr. Arshid Parvez Malik, Dy.A.G

**Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

**ORDER**

1. The applicant seeks bail as he has been booked for commission of offence under Section 420/120-B RPC in F.I.R No. 76/2019 initially registered with Police Station, Rajouri. The case was later on entrusted to Crime Branch, Jammu for investigation. The application moved earlier for bail before the Court of Judicial Magistrate, Kotranka was dismissed by that court vide order dated 22.04.2020. In the present application the bail is sought on the ground that the accused has not committed any offence as he was only appointed as agent of M/s Hablas-e-Commerce Pvt. Ltd. and in case the applicant has collected money on behalf of the investors it was for the company and not in individual capacity. Further it is contended that the charge-sheet has been presented against the accused in the Court of law and in case any

further recovery is to be made from the accused the same can be fruitful in case he is out of custody. It is further argued that some of the accused have been granted bail by the Court of learned Chief judicial Magistrate, Poonch in another related F.I.R having same allegations therein. Lastly, it is submitted that the accused is entitled to bail in view of the directions asked by the Apex Court on account of extraordinary situation prevailing because of COVID-19 pandemic.

2. The objections to the application have been filed wherein the bail application has been opposed on the ground that the complicity of the accused is direct in the case as he had not only made the depositors to deposit the amount with the company but also utilized the same as is evident from the bank accounts of the applicant. The amount of more than Rs. 12 Crore was collected by deception from the investors by the company and their agents as is revealed by the investigations as of now. The investigation is still going on in the case. It is also submitted that the accused in the case are having no permission from RBI to collect the cash deposits nor having licence from any of the authorized authority to run the business. The company is a total fraud as per the reports. The involvement of other employees whose names surfaced during interrogation and the losses suffered by the depositors is being worked out. In case the accused is released on bail he can tamper with the evidence.
3. The accused was arrested on 10.2.2020. The investigation in the case as is made out from the report is still in progress. Learned senior counsel for the applicant has submitted that the accused is only an employee of the company and in case he has collected some money

from the depositors the same is on behalf of the company for which the applicant cannot be made scapegoat. He has also relied upon a document which he has placed on record and of which mention is also made in the objections. The document cannot be considered in isolation as the role of the applicant is not confined to mere collection of money from the investors but goes beyond the same as the money collected is stated to have been utilized by the applicant for his personal use. The bank accounts of the applicant in various banks where the money to the tune of about two crores was credited are now without any balance. The purchases are alleged to have been made by the applicant-accused from the money collected by him and he could not account for same. The accused being the employee of the company in question and therefore his role is limited only to that extent is not gathered from the objections/report.

4. The other contention of the applicant is that the custody of the applicant cannot be helpful in further investigation of the case as in case further revelation is to be made the same is possible only if the accused is released from the custody. The learned counsel for the other side has vehemently argued that the release of the accused on bail at this juncture on the basis of the contention raised by the applicant has no force as there is every apprehension that the accused can flee from the process of law as his involvement in the case is direct and the amount involved in the transaction is not small one. The Court while considering the bail cannot overlook the alleged involvement of the accused in the case as has surfaced so far during the investigation. It is always convenient to raise the plea as espoused on behalf of the

applicant. The argument is required to be rejected for the simple reason that the amount involved is yet to be finally determined and the persons who have invested the amount in the company are yet to be investigated. The accused may escape from the clutches of law cannot be ruled out as the methodology adopted by the accused along with others who were part of the company was well thought one with a view to dupe the investors. The company duped the investors within no time after collecting the money from the depositors including the one who initially lodged the report and thus it speaks of the intention of the persons connected with the affairs of the company. The amount involved is found to be more than twelve crores as of now which is not a small one. The accused can be conveniently said to be involved in the economic offence.

5. The preliminary charge sheet has been filed arising out of the F.I.R in question and for that reason the accused should be granted bail is another plea raised on behalf of the applicant. The learned counsel for the respondent has submitted that the filing of the charge sheet cannot be the sole criteria for granting bail to the accused as the supplementary charge sheet is yet to be filed on the completion of the investigation and the arrest of the some of the accused persons is yet to take place. No doubt, the plea of the respondent that the bail cannot be granted to the accused on the ground that other accused are yet to be apprehended cannot be accepted for not granting bail to the accused. The filing of the charge sheet can be one of the reasons for bailing out the accused in any given case if the other conditions for grant of bail stand fulfilled. However, in the present case it is specifically

- mentioned in the objections that only the preliminary charge sheet has been filed and various aspects of the case are still under lens. The court is not impressed with the argument of learned counsel for applicant to grant bail on above stated plea.
6. Last but not the least, the plea raised for grant of bail on the basis of the directions passed by the Hon'ble Apex Court in the light of COVID-19 pandemic is of no avail to the applicant. The directions of the Hon'ble Supreme Court do not speak of the release of the persons who are accused of the offences which carry punishment upto seven years without exception during the present scenario. The release of the accused has to be on case to case basis if the Committee constituted for the purpose of release of the prisoners/under trials is of the view that the under-trial should be released on bail. The present case is not such where the Court finds that the discretion is required to be exercised by the Court in favour of the applicant. The offence in which the accused is booked carries sentence up to seven years but the role of the accused which is unfurled so far and which still requires to be investigated in the case, the discretion to grant bail in favour of the applicant cannot be exercised at this juncture.
7. So far as the grant of bail to the some of the accused vide order dated 11.4.2020 by the learned Chief Judicial Magistrate, Poonch is concerned the same cannot be of any assistance to the applicant. The bail has been granted in another F.I.R though it is pleaded that the allegations leveled in that F.I.R against the accused who have been bailed out are the same as in F.I.R No. 76/2020 which is subject matter of the present application.

8. The said Court has directed release of the accused on the basis of the directions of the Apex Court passed in the light of COVID-19 pandemic without discussing if the said accused should be granted bail otherwise in the light of the facts of the case emanating from the F.I.R in which they have been released. The accused cannot take any mileage on the basis of the order passed by the Chief Judicial Magistrate, Poonch, as in any case the involvement of the accused is apparently deep in the matter.
9. The accused cannot claim bail as a matter of right. The rule of bail and not jail cannot be pressed into service in the case of the applicant. Each case has its own peculiarities and circumstances which are required to be looked into while considering bail.
10. The Court does not find substantial change of circumstances to grant bail to the accused after the dismissal of the earlier application filed by the applicant for bail.
11. The Court finds no reason to allow the bail application at this stage and is, accordingly, dismissed.

**(PUNEET GUPTA)**  
**JUDGE**

Jammu  
15.06.2020  
Tarun

Whether the order is speaking? Yes/No  
Whether the order is reportable? Yes/No