

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

THROUGH VIRTUAL MODE

Bail Appl. No. 155/2021

Reserved on: 31.01.2022

Pronounced on: 03.02.2022

Ghulam Nabi Malik

...Petitioner(s)

Through: Mr. B.A.Tak, Advocate.

Vs.

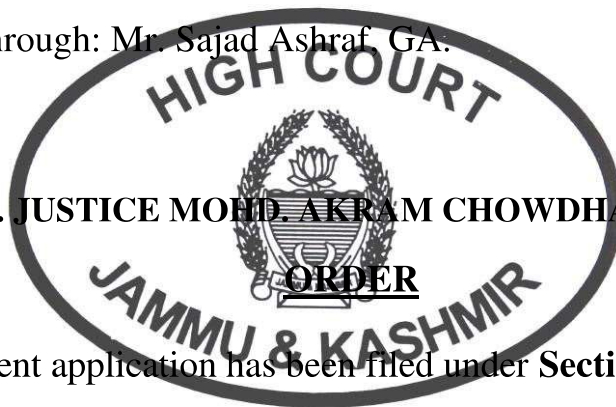
Union Territory of J&K &Ors.

...Respondent(s)

Through: Mr. Sajad Ashraf, GA.

CORAM:-

HON'BLE MR. JUSTICE MOHD. AKRAM CHOWDHARY, JUDGE



1. The present application has been filed under **Section 438 Cr.PC** for grant of bail in anticipation of arrest of the petitioner in case **FIR No.174 of 2009** registered at the Police Station, Kupwara under **Sections 153-A/120-B RPC and 13 UA(P) Act.**

2. Learned counsel for the petitioner vehemently argued that the respondent-police is hell-bent to take the petitioner into custody, in an old case of the year 2009 implicating him falsely; that the

to bail in anticipation of his arrest. Learned counsel further argued that the petitioner had initially applied for grant of bail in anticipation of his arrest before the court of learned Sessions Judge, Kupwara, however, the said court did not find favour with the application and it was rejected vide order dated 08.12.2021.

3. Mr. Sajad Ashraf, learned GA, appearing for the respondents, on the other-hand, vehemently argued that the petitioner is not entitled to grant of bail in anticipation of his arrest in a serious case for the commission of offences punishable under Sections 153-A and 120-B RPC. He further argued that in view of the serious and grave nature of the offence, petition be rejected so that the petitioner is prosecuted in a proper manner before the court of law.

4. Heard and considered.

5. The factual matrix of the case is that on 13.11.2009 (Friday), after conclusion of Friday congregation, an unruly mob in the form of procession came out led by eight people including the petitioner herein, raising anti-national slogans against the sovereignty and integrity of India; that through their speeches they tried to spread hatred against India urging people to wage war at each and every level.

6. The case was registered at Police Station, Kupwara vide FIR

No. 174/2009, for the commission of offences punishable under

of UA(P) Act. During the course of investigation, it was found that the persons involved in the incident were affiliated with Hurriyat.

7. The court below vide order dated 08.12.2021 rejected the bail plea of the petitioner by passing the following order:-

“...Having considered the contention put-forth by the ld. counsel for the complainant and the prosecution, I am of the opinion that the contention of the ld. counsel for the petitioner is ill conceived and misplaced because it is the application in terms of Section 438 Cr.PC 1973. While disposing of the instant application the question of cognizance does not arise as the application on hand pertains to bail rather than stage for taking cognizance. Here in the present case vide police report the alleged offence is against State and no prima facie case for grant of anticipatory bail is made out. Accordingly the application is rejected be consigned to records after due completion under rules.”

8. The Hon’ble Apex Court in a catena of judgments has laid down that while dealing with the application for bail in a non-bailable offences, the courts shall take into consideration the gravity of the

9. The offence under Section 153-A RPC is punishable with an imprisonment which shall not be less than four years but may extend to ten years and shall also be liable to fine; whereas the offence punishable under Section 120-B RPC is punishable in the same manner as if had abetted such offence.

10. The petitioner, even if the case is proved against him, shall be punishable to the maximum sentence of ten years, therefore, there is no statutory bar to grant him bail. The petitioner is required in an old case which has been registered about 12 years back and at this stage of investigation of the case, in the considered opinion of this Court, the custodial interrogation of the petitioner is unwarranted. The investigation of the case in absence of the custodial interrogation of the petitioner can be concluded. The petitioner shall be subjected to unnecessary harassment in case of his arrest in such an old case.

11. For the foregoing reasons and the observations made hereinabove, it is held that the petitioner is entitled to be admitted to bail in anticipation of his arrest. It is, thus, directed:-

- (a) **that, the petitioner in the event of his arrest, shall be released on bail subject to furnishing of personal bond to the tune of Rs.50,000/- with two sureties in**

the like amount to the satisfaction of SHO

- (c) that, the petitioner shall not leave the jurisdiction of this Court without prior permission from the SHO concerned;
- (d) that, the petitioner shall not hamper with the investigation and shall not tamper with the prosecution evidence in any manner.

12. Disposed of, as granted, accordingly.

(MOHD. AKRAM CHOWDHARY)
JUDGE

Srinagar
03.02.2022
Muzammil. Q

Whether the order is reportable. Yes / No

