

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

Reserved on : 17.08.2021
Pronounced on 23.08.2021

B. A No. 125/2018

Sunny Choudhary

.....Appellant/Petitioner(s)

Through :- Mr. Sudershan Sharma, Advocate

v/s

State of J&K

.....Respondent(s)

Through :- Mr. Aseem Sawhney, AAG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner has filed the present bail application seeking bail in challan, titled, State of J&K vs. Rattan Lal, arising out of FIR bearing No. 66/2014 dated 20.03.2014 registered with Police Station, R. S. Pura for commission of offences punishable under sections 302, 460, 148 149, 427, 120-B, 109 RPC and Section 4/25 of the Arms Act pending before the court of learned Ist Additional and Sessions Judge, Jammu (hereinafter referred to be as the trial court).

2. It is contended in the petition that there are as many as 55 witnesses mentioned in the challan and till date only 11 witnesses have been examined by the prosecution and none of witnesses examined so far, has supported the case of the prosecution connecting the petitioner with the alleged offences/crime. It is the further case of the petitioner that the petitioner has been falsely implicated in a false and frivolous case as there is no evidence

against the petitioner on record showing involvement of the petitioner in the commission of alleged offences and even in the charge sheet, it has been stated that no injury has been inflicted by any outside person(s) and all the injuries were inflicted by family members of Mohinder Kumar. It is also stated that one of the main witness, namely, Neelam Verma, Police official has categorically and specifically stated before the trial court that at no point of time he had allowed any one to establish contact with the petitioner named in the aforesaid FIR, whereas in the FIR it has been alleged that the said persons met the petitioner while in custody and a conspiracy was hatched to murder the deceased. It is further contended that right of speedy trial of the petitioner has been violated as till date only 11 witnesses have been examined by the trial court. It is further stated that the petitioner had earlier filed bail application before the trial court but the learned trial court dismissed the said application vide order dated 07.06.2018 and now, the present bail application has been filed.

3. Objections stand filed by the respondents, in which it has been stated that after a detailed investigation, the involvement of the petitioner was found in hatching the conspiracy for murder of the deceased. The petitioner has arranged two persons, namely, Gulshan Kumar and Bilbir Singh for committing the murder. It is also stated that the petitioner cannot be granted bail as there is bar in granting the bail for commission of offence under section 302 RPC.

4. Mr. Sudershan Sharam, learned counsel for the petitioner has reiterated the grounds taken in the bail application. Besides, he submitted that

the many material witnesses have been examined and the complainant, PW-1-Ashwani Kumar, is yet to be examined.

5. On the other hand, Mr. Aseem Sawhney, learned AAG vehemently submitted that evidence cannot be appreciated while considering the application for grant of bail. He further submitted that since the charges against the petitioner are of serious nature, as such, the petitioner is not entitled to be enlarged on bail at this stage, when only 11 out of 55 witnesses have been examined and the petitioner will threaten and win over the witnesses if granted bail.

6. Heard learned counsel for the parties and perused the record.

7. From the perusal of the record, it is evident that the charges for commission of offence under section 302, 109, 120-B RPC were framed against the petitioner on 02.01.2015 by the trial court and the allegations against the petitioner are that the other co-accused met with the petitioner for committing the murder of the deceased and conspiracy was hatched. The petitioner arranged two persons, namely, Gulshan Kumar and Balbir Singh for committing the murder of the deceased. The prosecution has cited as many as 55 witnesses, out of which only 11 witnesses have been examined till date and rest of the witnesses including the complainant are yet to be examined. The petitioner is facing trial for commission of offences under section 302, 109 and 120-B RPC and there is specific bar with regard to the grant of bail for offence under section 302 RPC. At this stage, from the perusal of the statements of the witnesses, no definite opinion can be formed that there are reasonable grounds for believing that the petitioner is not guilty of alleged offences. No doubt that

the petitioner is facing trial for the last seven years but it is also fact that he is facing trial for commission of heinous offence of murder.

8. The Hon'ble Apex Court has considered the relevant considerations for grant of bail in *Jayendra Saraswathi Swamigal v. State of T.N.*, reported in (2005) 2 SCC 13, the relevant para is extracted as under:

"16. ----The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in *State v. Capt. Jagjit Singh* [(1962) 3 SCR 622 : AIR 1962 SC 253 : (1962) 1 Cri LJ 215] and *Gurcharan Singh v. State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179] and basically they are- the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case. -----"

9. Then again in *Prasad Shrikant Purohit v. State of Maharashtra*, (2018) 11 SCC 458, Apex Court has held as under:

"29. The law in regard to 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, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.

31. At the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused.

10. The law is well settled that the court should refrain from appreciating the evidence, while considering the bail application. Further the Apex Court in **Satish Jaggi v. State of Chhattisgarh, reported in (2007) 11 SCC 195** has held as under:

“12. Normally if the offence is non-bailable also, bail can be granted if the facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress and if such findings are allowed to stand it would seriously prejudice the prosecution case. At the stage of granting of bail, the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.

13. In the present case, the findings recorded by the learned Chief Justice, as referred to above, virtually amount to the regular trial pointing out the deficiency and reliability/credibility of the prosecution evidence. Such findings recorded at the stage of consideration of bail, in our view, cannot be allowed to sustain.”

11. There are serious allegations against the petitioner of hatching a conspiracy for committing murder and arranging the killers in pursuance of the said conspiracy. At this stage, it cannot be determined that the allegations are either false or not true as number of other witnesses are yet to be examined and there is every chance that if the petitioner is enlarged on bail, he may influence the witnesses as the petitioner is facing trial for commission of offence, which is punishable with death or imprisonment to life. So far as delay in the conclusion of trial is concerned, perusal of record shows that the trial court has conducted the effective proceedings and even to secure the presence of the complainant-PW-1, trial court has resorted to even coercive process. It requires to be noted that for the last two years, the courts have been functioning in restricted mode and obviously some delay has caused due to Covid-19 pandemic in conducting the trial of the case.

12. In view of what has been discussed and stated above, the present bail application is found to be misconceived. The same is, as such, dismissed.

(Rajnish Oswal)
Judge

JAMMU
23.08.2021

Karam Chand/Secy.

Whether the order is speaking:
Whether the order is reportable:

Yes
Yes/No