

Jammu & Kashmir High Court

Gopal Krishan And Others vs Ut Of J&K on 17 January, 2023

51

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Bail App No. 12/2023

Gopal Krishan and others

.....Petitioner(s)

Through: Mr. Ateet Spolia, Advocate

Vs

UT of J&K

.....Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
ORDER

17.01.2023 The petitioners' grievance is that they have been denied default bail by the trial Court of Principal Sessions Judge, Udhampur. In this regard learned counsel for the petitioners submits that the petitioners came to be booked for alleged commission of offences under section 302 & 201 read with section 34 of the Indian Penal Code and in this regard FIR no. 322/2021 with the Police Station Udhampur came to be registered.

The petitioners came to be under arrest on the basis of said FIR. The Police Station Udhampur came to present a purported final police report/challan no. 392/2021 dated 07.12.2021 before the Court of Chief Judicial Court Udhampur which in turn committed the case to the Principal Sessions Judge, Udhampur.

While hearing on the aspect of the charge framing in case the Court of Principal Sessions Judge, Udhampur came to hold that the police report filed in the case needs to be returned to the Investigating Agency for further investigation and placing on record of all the necessary facts and circumstances in right perspective with further direction to the Investigating Agency to ascertain the authenticity of the video clip by getting the same examined from FSL/CFSL, besides, examining the witnesses who watched the same live or immediately thereafter and were also well conversant with the voice of deceased and the accused persons.

In the name of the alleged further investigation, the Principal Sessions Judge, Udhampur seems to have directed the re-writing of the script of the case, to be monitored by the SSP Udhampur personally. The petitioners reckoned the return of the purported charge-sheet by the Principal Sessions Judge, Udhampur in terms of an order dated 21.02.2022 as default in the presentation of a proper Police Report/challan cognizable in the eyes of law and by that reckoning held themselves entitled to default bail.

The investigating agency had come to file the so called fresh charge-sheet in the name of re-submission along with a supplementary report on 12.04.2022 and the said supplementary report was separately registered and made part of the main file in terms of an order dated 12.04.2002. Thus, learned counsel for the petitioners submits that the petitioners suffered custody beyond a period of ninety (90) days without there being any charge-sheet in the eyes of law being laid against them to be taken cognizance of by the trial Court and as such entitled them to earn default bail. By reference to judgement of the Division Bench of this Court in CrIa(D) no. 17/2022 titled "Peerzada Rafiq Maqdoomi Vs U.T. of J&K" dated 07.07.2022, learned counsel for the petitioners draws a reference from the fact that neither the prosecution had reserved its right to submit supplementary charge-sheet in the name of pending further investigation nor the police report so filed as it was taken cognizance of by the Principal Sessions Judge, Udhampur and as such right to claim default bail had accrued to the petitioners from the very expiry of ninety (90) days from the date of their arrest but they continue to suffer custody. As per the learned counsel for the petitioner, the learned Sessions Judge Udhampur became a guide to the Investigation Authority and the Prosecution in the case.

Prima facie case is made out.

Issue notice to the respondent.

Mrs. Monika Kohli, learned Sr. AAG appearing vice Mr. Sumit Bhatia, learned GA on behalf of the respondent. Mr. Bhatia, learned GA is directed to assist this Court on this point of law on the next date of hearing.

List this application on 19.01.2023.

(Rahul Bharti) Judge Jammu 17.01.2023 Muneesh