

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Bail App. No. 237/2022

c/w

CRM(M) No. 563/2022

CrIM No. 1142/2022

Mohammad Azam & Ors.

..... Petitioner(s)/Appellant(s)

Through: Mr. Lawanya Sharma, Advocate vice
Mr. Zeeshan Javed Rana, Advocate

Vs

..... Respondent(s)

UT of J&K

Through: Mr. Jameel Ahmed, Advocate for No. 2 in
CRM(M) No. 563/2022
Nemo for No. 1 in CRM(M) No. 563/2022

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER

23.10.2024

CRM(M) No. 563/2022

1. There is no representation on behalf of respondent No. 1.
2. Heard learned counsel for the petitioners and the respondent No. 2.
3. The instant petition filed under Section 482 of the Code of Criminal Procedure 1973 (herein after referred to as Code for short) is pending disposal since July, 2022.
4. Through the medium of the instant petition, the petitioners have sought the quashment of the FIR No. 166/2022 registered with Police Station Surankote District Poonch against them. The quashment of the FIR has been sought mainly, on the grounds, that same is outcome of rivalry and frivolity as well as the counter action of registration of FIR No. 154/2022

registered with the same Police Station against the family members of responden No. 2/complainant.

5. It is revealed from the perusal of the petition that petitioner No. 1 is wedded to the son of respondent No. 2; that the petitioner No. 1 was continuously subjected to cruelty at the hands of her matrimonial relatives including the respondent No. 2 as well as her husband; that on 09.06.2022, the brother of the petitioner No. 1 went to the matrimonial home of her sister, i.e., petitioner No. 1 where pursuant to some oral arguments between him and the matrimonial relatives of petitioner No. 1, incident of attack occurred with the brother of petitioner No. 1 in connection whereof, FIR No. 154/2022 came to be registered with Police Station, Surankote for commission of offences punishable under Sections 341, 323, 147, 427 IPC 3/25 Arms Act; that the respondent No. 2 and her family in order to save themselves and to counter the genuine FIR lodged by the petitioners, filed a false and frivolous complaint with the concerned Police Station that led to the registration of the FIR No. 166/2022 dated 16.06.2022 alleging therein that the petitioners kidnapped the petitioner No. 1 from her matrimonial home and while doing so they attacked on the family members of respondent No. 2 and bet them.
6. Learned counsel for the petitioners reiterated his stand taken in the memo of the petition and vehemently submitted that the FIR No. 166/2022 dated 16.06.2022 being outcome of frivolity and rivalry be quashed, whereas the learned counsel for respondent No. 2 submitted that the FIR No. 166/2022 registered with Police Station, Surankote District, Poonch is based on facts as the occurrence leading to the registration of the same

was occasioned by the petitioners on 16.06.2022, when they approached the home of respondent No. 2 in the form of an unlawful assembly with Dandaas in their hands whereupon they attacked the family members of respondent No. 2/complainant and kidnapped the petitioner No. 1 from her matrimonial home.

7. Mr. Jameel Ahmed, learned counsel appearing for respondent No. 2 submitted that on account of an interim order dated 07.07.2022 passed on this petition, the Investigating Officer of the case/SHO concerned is not in a position to file the final report/challan before the Competent Court. Learned counsel submitted that the petition be dismissed as meritless.
8. I have considered the rival submissions of the learned counsel for the contesting parties. The record of the instant petition has also been gone through minutely.
9. In the backdrop, this Court is of the considered opinion that no ground appears to be made out for quashment of the FIR in question, bearing No. 166/2022 dated 16.06.2022. The Investigation in a criminal case is supposed to ascertain the truth and to bring the real facts before a criminal Court. Any alleged irregularity or illegality in the investigation process is subject to the judicial scrutiny at the trial of the case.
10. In the facts and circumstances of the case, petitioners do not appear to have made cogent grounds to form an opinion that the registration of the FIR sought to be quashed, is outcome of misuse or abuse of law. There is a counter case bearing FIR No. 154/2022 registered with the same Police Station against some family members of the respondent No. 2 which may also be likely at investigation stage. The investigation in both the counter

case FIRs is going on for the last more than two years. The investigation in both the cases is supposed to have become oppressive against the accused in both the cases.

11. The powers inherent in this Court in terms of provisions of Section 482 of the Code (now repealed and corresponding to the provisions of Section 528 of BNSS) cannot be itself misused by this Court to cause miscarriage of justice.
12. Accordingly, the instant petition is ***dismissed***. The SHO Police Station, Surankote District Poonch/I.O of the case of FIR No. 166/2022 dated 16.06.2022 shall conclude the investigation in the case with utmost promptitude after getting the statement of petitioner No. 1-Feroz Akhter W/o Mumtaz Ahmed alleged to have been kidnapped, recorded before the Judicial Magistrate if not already examined, as such, and proceed further in the matter by filing the final report in terms of Section 173 of the Code.

Bail App No. 237/2022

1. The petitioners/accused are on interim pre-arrest bail since 07.07.2022. The respondents have not chosen to file their objections till date despite elapse of more than two years.
2. Heard the learned counsel for the parties and considered their submissions.
3. This Court is of the considered opinion that it may be in the ends of justice in case the interim pre arrest bail already granted in favour of the petitioners vide order dated 07.07.2022 is made absolute, subject to some reasonable terms and conditions.

4. The Hon'ble Apex Court in its Judgments cited as Siddharam Satlingappa Mhetre Vs. State of Maharashtra decided on 02/12/2010, AIR 2011 SC 312 and Sushila Aggarwal and others vs. State (NCT of Delhi) and Another decided on January 29, 2020 by a larger bench 2020 SC online 98, has interpreted law on the subject of anticipatory bail with a very wide outlook and while interpreting the concept of liberty guaranteed under Article 21 of the Constitution of our country in a flexible and broader sense. The Hon'ble Apex Court has admittedly in the Judgments held the earlier law on the subject laid down in Chain Lal vs. State of Madhya Pradesh (1976) 4 SCC 572; Salau-ud-din Abdul Samad Heikh vs. State of Maharashtra AIR 1996 SC 1042; K. L. Verma vs. state and another 1996 (7) SCALE 20; Sunita Devi vs. State of Bihar and another AIR @))% SC 498; 2005 AIR (Criminal) 112; Adri Dharan Das vs. state of West Bengal AIR 2005 SC 1057 and Naresh Kumar Yadoo vs. Ravinder Kumar and others 2008 AIR (SC 218) decided on 23rd October 2007, as per incuriam.
5. It was held by the Apex Court in Siddharam Satlingappa Mhetre Vs. State of Maharashtra decided on 02/12/2010, AIR 2011 SC 312 that purpose of Anticipatory Bail is to uphold cardinal principle of criminal jurisprudence that an accused person is presumed to be innocent till he is proved to be guilty and that section 438 need not be invoked only in exceptional or rare cases. Discretion must be exercised on the basis of available material and facts of particular case. It has also been held in the said case that anticipatory bail cannot be granted for a limited period. Accused released on anticipatory bail cannot be compelled to surrender before trial court

and again apply for regular bail. It is contrary to the spirit of section 438 and also amounts to deprivation of her personal liberty. Ordinarily, benefit of grant of anticipatory bail should continue till end of trial of that case unless bail is cancelled on fresh circumstances. That grant or refusal of bail should necessarily depend on facts and circumstances of the each case.

6. The following factors and parameters have been laid down for consideration while dealing with anticipatory bail.

- a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- c) The possibility of the applicant to flee from justice;
- d) The possibility of the accused's likelihood to repeat similar or the other offences.
- e) Whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of section 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

- i) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution in the normal course of events, the accused is entitled to an order of bail.

7. It is profitable to reproduce a relevant complex extract from the said judgment as under:-

“....The inner urge for freedom is a natural phenomenon of every human being. Respect for life and property is not merely a norm or a policy of the state but an essential requirement of any civilized society. Just as the liberty is precious to an individual, so is the society’s interest in maintenance of peace, law and order.”

“A great ignominy, humiliation and disgrace is attached to the arrest. In case, the state considers some suggestions laid down by the Apex Court, it may not be necessary to curtail the personal liberty of the accused in a routine manner. As reported by and large nearly 60% of the arrests are either unnecessary or unjustified. As held, the arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. Similarly, the discretion vested with the court under section 438 Cr.P.C. should be exercised with caution and prudence. It is imperative to sensitize judicial officers, police officers and investigating officers so that they can properly comprehend the importance of personal liberty viz-a-viz social interests. Once the anticipatory bail is granted then the protection should ordinarily be available till the end of the trial.”

8. In the recent judgment of Sushila Aggarwal and others vs. State (NCT of Delhi) and another decided on 29, January 2020 a larger bench of Hon’ble Apex Court was pleased to inter-alia lay down the following

guiding principles for consideration of the pre-arrest bail applications by the Courts:

- (i) *Nothing in Section 438 Cr. P.C. compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified and ought to impose conditions spelt out in Section 437 (3), Cr. PC [by virtue of Section 438.*
- (ii) *The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.*
- (iii) *Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.*
- (iv) *Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge sheet till end of trial. An order of anticipatory bail should not be blanket in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.*
- (v) *An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.*

9. I am also supplemented in my opinion with an earlier authoritative judgment of the Hon'ble Apex Court cited as Lal Kamlandra Pratap Singh vs. State of UP (2009) 4 SCC 437 in which the unnecessary arrests have been strongly condemned being violative of the right to liberty.
10. Admittedly, while considering the anticipatory bail under section 482 of the BNSS, the court has to primarily satisfy itself regarding the conditions precedent for seeking such special relief and when such prior conditions are fulfilled, then the court has to consider all those principles and guiding rules which are necessary under law for consideration of a regular bail application, So, it is apt at this juncture to reproduce the guiding principles that are being nowadays reiterated by the Hon'ble Apex Court and other High Courts of our country for the consideration of a bail application and which are as under:-
- i) The judicial discretion must be exercised with the utmost care and circumspection.
 - ii) That the Court must duly consider the nature and the circumstances of the case including:
 - a. A reasonable apprehension of the witnesses being tampered;
 - b. Investigation being hampered or
 - c. The judicial process being impeded or subverted.
 - iii) The liberty of an individual must be balanced against the larger interests of the society and the State;
 - iv) The court must weigh in the judicial scales, pros and cons varying from case to case all along bearing in mind two paramount considerations viz;
 - v) Grant of bail quo an offence punishable with death or imprisonment for life is an exception and not the rule;
 - vi) The court at this stage is not conducting a preliminary trial but only seeking whether there is a case to go for trial;

vii) The nature of the charge is the vital factor, the nature of evidence is also pertinent, the punishment to which the party may be liable also bears upon the matter and the likelihood of the applicant interfering with the witnesses or otherwise polluting the course of justice.

viii) The facts and circumstances of the case play a predominant role.

(AIR 1962 SC 253; AIR 1978 SC 179; AIR 1978 429; 2003(ii) SLJ 389; 2004 (7) SCC 525; 2005 (1) SLJ 189; AIR 2005 SC 716; AIR 2007 SC 32458; AIR 2007 SC 451 and 2007 (ii) SLJ 634.

11. The Hon'ble Apex Court in *Gur Bakash Singh vs. State of Punjab* AIR 1980 SC 1632, referred to the following extract from the American jurisprudence having bearing on the subject of bail, "where the grant of bail lies within discretion of the court, granting or denial is regulated to a large extent, by the facts and circumstances of each particular case. Since the object of detention order/imprisonment of the accused is to secure his appearance and submission to jurisdiction and the judgment of the court, the preliminary enquiry is whether a recognizance or bond would effect that end. It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or necessarily justifying the grant or refusal of bail."
12. It has been held in *State of Rajasthan Jaipur vs. Balchand* AIR 1977 SC 2447 I that it is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with the court when considering the question of bail."

13. Admittedly, in case of non-bailable offence, which do not carry the sentence of death or imprisonment for life in alternative, bail is a rule and its denial an exception especially where there is nothing on record to show that the accused if admitted to bail will jump over the concession of bail and will tamper with the prosecution witnesses. (Jawahar Barua vs. State of Jammu & Kashmir 19073 JKLR-74).
14. It is a trite that two paramount considerations viz: likelihood of accused fleeing from justice and his tampering with prosecution evidence relate to the ensuring of fair trial of the case in a court of justice, It is essential that due and proper weightage should be bestowed on these two factors apart from others. The requirements as to bail are merely to secure the attendance of the accused at the trial (Gurcharan Singh vs. State (Delhi Administration) AIR 1978 SC 179; G. Nara Simhula vs. Public Prosecutor Andhra Pradesh AIR 1978 SC 429; Assad Ullah Khan and Others vs. State of Jammu & Kashmir SLJ 1980 J&K 31; Jeet Ram and etc. etc. vs. State of Himachal Pradesh 2003 Cr. Law Journal 736).
15. Bail or jail at the pre-trial or post conviction stage belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion. Personal liberty deprived when bail is refused is too precious a value of our constitutional system recognized under Article 21 that the crucial power to negate it is a great trust exercisable not casually but judiciously with lively concern for the cost to the individual and the community. After all personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms

of procedure established by law (G. N. Nara Simhula vs. Public Prosecutor Andhra Pradesh AIR 1978 SC 429).

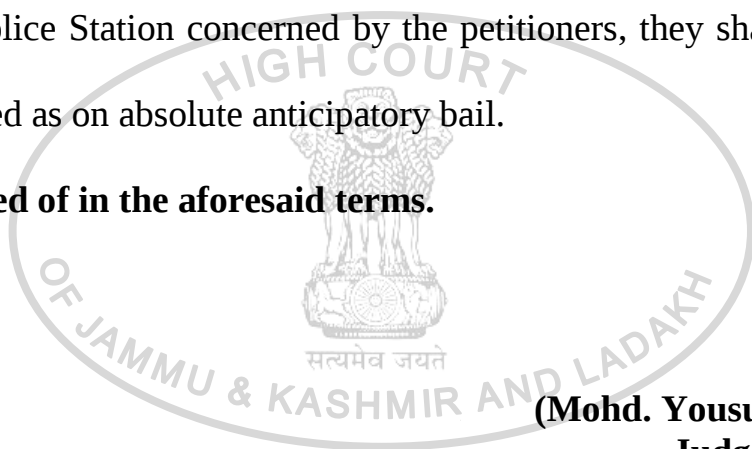
16. Very cogent and overwhelming circumstances are necessary for an order seeking rejection of bail. It is now well settled by a catena of decisions of the Hon'ble Supreme Court that the power to grant bail is not to be exercised as if punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for trial and whether he is likely to abuse the discretion granted in his favour by tampering with the evidence. If there is no prima-facie case, there is no question of considering other circumstances (Bhagirathsinh Judeja vs. State of Gujarat AIR 1984 SC 372).
17. It is also a settled legal position that mere gravity of offence and severity of punishment is no ground for rejection of bail application especially where there is no allegations that if released on bail, the accused is likely to abscond with a view to evade the trial and secondly where there is no material on record to show that in the event of bail, the accused is likely to tamper with the prosecution witnesses (Jagram vs. State of Haryana 1996 (1) RCR 575; Jeet Ram and etc. etc. vs. State of Himachal Pradesh 2003 Cr.L.J. 736).
18. In view of the aforementioned discussion, the application is allowed and the petitioners are admitted to pre-arrest bail in absolute in case FIR No. 166/2022 dated 16.06.2022 registered with Police Station, Surankote, District Poonch subject to their furnishing of surety and personal bonds to

the tune of Rs. 25000/- each to the satisfaction of SHO Police Station concerned. This bail order shall be subject to following conditions:-

- i. That the petitioners shall not directly or indirectly make any inducement, threat or promise to any person/s acquainted with the facts of the case so as to dissuade him/them from disclosing such facts to the court or to any police officer.
- ii. That the petitioners /accused shall not repeat the commission of crime.
- iii. That the petitioners /accused shall remain punctual at the trial of the case in case of presentation of final report/challan under Section 193 of BNSS.
- iv. In case of any recovery from or at the instance of the petitioners they shall be deemed to be in the custody for the purpose of Section 23(2) of Bharatiya Sakshya Adhiniyam, 2023.

19. In case the requisite bail bonds are furnished to the satisfaction of the SHO Police Station concerned by the petitioners, they shall in that event be treated as on absolute anticipatory bail.

20. **Disposed of in the aforesaid terms.**



(Mohd. Yousuf Wani)
Judge

Jammu
23.10.2024
Meenakshi