

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

Bail App No. 2/2023

**Reserved on:- 25.04.2023
Pronounced on:- 03.05.2023**

1. Ashok Kumar aged 53 years S/O Paras Ram;Petitioner(s)
2. Jaisuriya Sharma aged 27 years S/o Ashok Kumar, both residents of Pallanwalla, Jammu.
(Presently both lodged in District Jail Amphalla, Jammu)

Through :- Sh. R .K. Kotwal, Advocate.

V/s

Central Bureau of Investigation, Anti-Corruption Branch Jammu Panama Chowk Jammu through Head of the Branch.Respondent(s)

Through:- Ms. Monika Kohli, Sr. AAG

Coram: HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

O R D E R

1. Petitioners have invoked the jurisdiction of this Court under section 439 of the Code of Criminal Procedure (hereinafter referred as CrPC) seeking bail in a case arising out of FIR No. RC0042022A0008 registered with Police Station CBI, ACB, Panama Chowk Rail Head Jammu for commission of offences punishable under Sections 201, 408, 411 & 420 IPC. It is averred, that petitioner No.1 is not only a government employee but is a chronic patient of heart ailment and was arrested by the Central Bureau of Investigation on 06.11.2022, while petitioner No.2 is an unemployed person and was also taken into custody on 09.11.2022 in aforesaid false and frivolous case pertaining to recruitment of Police Sub-Inspectors; that the records of the case clearly reveal that there is not an iota of evidence against both the petitioners regarding their conspiracy so far as the leakage of the question paper is concerned, therefore, the rigor of section 420 r/w section 120-B of IPC is not applicable to them; petitioners are innocent and have not committed any offence, the trial Court has rejected the bail application of petitioner No.1 in

view of the order passed by this Court in case titled “Dr. Karnail Singh vs CBI” arising of the same FIR vide order dated 30.11.2022. It is stated that the gravamen of charge against both the petitioners is, that they had dishonestly received the stolen property i.e the leaked question papers pertaining to the selection of Police Sub Inspectors, that the petitioners undertake to abide by all the terms and conditions which this Court may impose while granting post arrest bail to them.

2. Respondent by filing objections, *inter-alia*, has opposed the bail on the grounds, that the instant bail application is completely devoid of merit and is baseless, applicant no. 2 Jaisuriya Sharma has approached this Court directly without availing the alternate remedy of approaching the trial Court and applicant no. 1 Ashok Kumar has filed second bail application immediately after rejection of the same by Ld. CJM Jammu despite there being no change in circumstances, as such, this application is not maintainable. It is contended that the accused persons have played key role in the criminal conspiracy to sell the leaked question paper to candidates in lieu of money, they have no regard for the law of the land and can go to any extent to frustrate the legal process, they have already destroyed material evidence by concealing proceeds of crime and deleting data of their mobile phones, there is every likelihood that if enlarged on bail they may commit similar offence again. It is contended, that vide letter No. GAD-VIG0COMP/285/2022-04-GAD dated 08.07.2022, Dr. Mohammad Usman Khan KAS, Deputy Secretary, GAD, Govt. of J&K has conveyed the decision of Govt. of J&K for investigation by CBI into allegations of irregularities in written examination of Sub-Inspectors posts in J&K Police conducted by J&KSSB on the basis of report of Inquiry Committee constituted by the Govt. of J&K, whereby it was, *prima-facie*, revealed that criminal conspiracy amongst officials of J&K SSB, M/S Merit Trac Bengaluru, beneficiary candidates and other accused persons causing gross irregularities in conduct of written examination of Sub Inspectors posts in the J&K Police conducted by JKSSB, and accordingly, regular case **FIR No. RC0042022A0008** was registered under Section 120-B r/w Section 420 IPC on 03.08.2022 against the officials of J&KSSB, M/S Merit Trac Bengaluru, beneficiary candidates and other candidates, wherein the name of the petitioners have been mentioned at Serial Nos. 2 and 13 of the FIR. It is moreso contended, that the inquiry report of the Committee, report of CID of J&K has been cited wherein their role in the scam is clearly mentioned, the

investigation conducted so far has revealed that M/S Merit Trac Services Pvt. Ltd. Bengaluru was awarded the contract despite it not being the L1 and despite the fact that ONGC had reportedly terminated the contract of M/S Merit Trac on 13.01.2015 on the grounds that the agency failed to conduct the examination satisfactorily as per the contract of conducting of written examination of Sub Inspectors post but led to leakage of question papers before the date of examination, the assignment of the task relating to the setting up of the question papers, mixing of question papers etc. to M/S Merit Trac is in contravention to the Regulation Nos. 9, 10 and 16 of the (i) J&KSSB (Business and Procedure) Regulations 2013 and (ii) J&KSSB(Conduct of Examination) Regulations 2013, in the inquiry report it has been alleged that certain OMR Answer Sheets were replaced with either without the signatures of the candidates/Invigilators or the forged signatures of the invigilators, besides JKPSI Exam, question papers of Finance Accounts Assistant & JE(Civil) conducted on 06.03.2022 and 20.03.2022 respectively were leaked. It is stated that investigation has revealed that Ashok Kumar ASI J & K Police entered into criminal conspiracy with Ashwani Kumar, Jaisuriya Sharma and other accused persons, and in pursuant to the said conspiracy he arranged vehicles on 25.03.2022 for transportation of candidates from Jammu to Karnal for providing leaked question paper in lieu of money, in pursuance to the said criminal conspiracy he sent his son Jaisuriya Sharma, who is also candidate to Karnal who drove the Bolero vehicle owned by Ashok Kumar, CDR analysis has revealed that Ashok Kumar ASI was in regular touch with Ashwani Kumar (7056000406) and his son Jaisuriya on 26.03.2022 while they were returning from Karnal, CDR analysis further revealed that Ashok Kumar ASI (7051121757) was in regular touch with Surrinder Singh who provide Tempo Traveller on 25.03.2022 and also with Balwant Singh driver of the said Tempo Traveller, investigation further revealed that Jaisuriya was driving the Bolero Vehicle no. JK02BT-7177 registered in the name of Ashok Kumar father of Jaisuriya. It is contended that charge sheet has been filed on 12.11.2022 against accused/applicants and 22 other persons for commission of offences under sections 120-B r/w 201, 408,4011, 420 IPC; investigation is under way to unearth larger conspiracy including role of applicants, the criminal conspiracy amongst accused persons operating across several states in India, accused Ashok Kumar being police official is highly influential and may influence the

witnesses and destroy the evidence, release of applicants at this stage of further investigation may prejudice the investigation of the case which is being conducted in right manner, the larger interest of public demands that the accused are not entitled to bail.

3. Sh. R. K. Kotwal Ld. Counsel has sought release of petitioners on bail by vehemently canvassing arguments, that nothing incriminating has been found against the petitioners during the search of their house by the respondents and during the period of their arrest on 06.11.2022 and 09.11.2022 till they were lodged in judicial custody they were subject to worst kind of physical and mental violence at the behest of the respondents. It is argued that investigation is complete and nothing is to be recovered or to be investigated from them, petitioner No.1 has suffered Ischemic Heart disease, which is a life consuming disease and he got admitted in Government Medical College Jammu w.e.f 30.03.2007 to 05.04.2007 and on 25.04.2007 he went to AIIMS for his checkup at Delhi where the doctors also confirmed the ailment of petitioner No.1 and advised him the requisite treatment and medicines, ever-since then, he is on medication and regular follow-up. It is moreso argued, that the petitioners are respectable persons of society, petitioner No.1 is a government employee (ASI in J&K Police) has never committed any criminal offence and even the allegations of cheating and criminal conspiracy against petitioners for commission of offences under Sections 120-B r/w sections 201, 408, 411 & 420 IPC are only punishable for seven (7) years imprisonment for which bail cannot be refused, petitioners cannot be incarcerated for a longer period of detention which amounts to infliction of pre-trial punishment, therefore, the petitioners have a right to be admitted on bail, that the grant of bail is a general rule and refusal is an exception, offences against the petitioners are not grave and heinous and even on health grounds petitioner no. 1 can be released on bail by imposing certain conditions which the Court deems fit and proper in the circumstances of the case.
4. Ms. Monika Kohli, learned Sr. AAG, appearing on behalf of the respondent while reiterating the grounds urged in the objections filed by the respondents, has vehemently opposed the grant of bail to the accused persons by portraying arguments, that petitioner /accused No.1 holding the post of Assistant Sub Inspector in J&K Police alongwith his son and other persons have indulged in criminal conspiracy with the officials of J&K SSB and M/S Merit Trac Bengaluru the company assigned the task of conduct of written examination

of Sub-Inspectors' post in UT of J&K for J&K Police to be conducted by J&K SSB which speaks volumes about the mis-conduct of the petitioners. It is argued that as many as 33 accused persons are indicted in the FIR No. RC0042022A0008 registered against the petitioners and in the said FIR the petitioner No.1 figures at Serial No. 2 as an accused and his son figures at Serial No. 13, petitioners have played key role in the said scam, the investigation so far conducted has revealed that M/S Merit Trac Bengaluru was awarded the conducting of the written examination for the post of Sub-Inspectors in J&K and during the conduct of the examination petitioners entered into criminal conspiracy with other accused based in Haryana for leakage of question papers and sale of the same to the candidates in lieu of money, petitioners/accused are highly influential persons and may influence the prosecution witnesses, whereby, the investigation may be prejudiced and moreover the career of hundreds and thousands of aspirants have been marred/spoiled, the investigation is underway and more accused are likely to be arrested for sustained interrogation, and if the petitioners/accused are enlarged on bail it will be difficult for the investigating agency to unearth the Inter-State gangs operating in several States. Prayer has been made for rejection of the bail application.

5. I have heard learned counsel for the petitioners and Ld. Sr. AAG for respondent. I have perused the contents of bail application, objections of the respondents and have also bestowed my thoughtful consideration to the material aspects involved in the case.
6. Before deciding the bail application in hand, I would like to enumerate the factors, which should be taken into consideration while granting or refusing bail in a non-bailable case. The Hon'ble Supreme Court in case laws titled "*State of U.P vs. Amarmani Tripathy, reported in 2005 (8) SCC 21* vide paragraph-8 and in Criminal Appeal No. 448 of 2021 [@ Special Leave Petition (Crl.) No. 3577 of 2020] (*Sudha Singh-Appellant(s) versus The State of Uttar Pradesh and Anr.-Respondent(s)* judgment delivered on 24.04.2021] has culled out certain factors to be taken into consideration while deciding bail application in non-bailable offences as under:-

"It is well settled that the matters to be decided in an application for the bail are:-

- (I) Whether there is any prima-facie or reasonable ground to believe that accused has committed the offence;
- (II) Nature and gravity of the charge;
- (III) Severity of punishment in the event of conviction;

- (IV) Danger of the accused absconding or fleeing if released on bail;
- (V) Character, behaviour, means, position and standing of the accused;
- (VI) Likelihood of the offence being repeated;
- (VII) Reasonable apprehension of the witnesses being tampered with and
- (VIII) Danger, of course of the justice being thwarted by grant of bail;

Indeed, these guidelines/factors are not exhaustive, nonetheless, these have to be considered while passing an order in a bail application in a non-bailable offence.

7. It is apt to reproduce the summary of investigation conducted by the CBI in the charge-sheet filed by it before the Court of Chief Judicial Magistrate Jammu as under:

19. Thus, from the aforesaid facts and circumstances, statement of witnesses and documents collected during investigation, it is established that the accused Yatin Yadav entered into criminal conspiracy with other accused persons. In pursuance to the said criminal conspiracy, accused Pradeep Kumar, employee of KYR Infosys Pvt. Ltd. committed criminal breach of trust and stole the question paper of JKPSI exam and dishonestly handed over the same to accused Yatin Yadav. In pursuance to criminal conspiracy accused Yatin Yadav contacted other accused persons namely, Anil Kumar, Surender Singh, Bajinder Singh to arrange candidates for sale of question paper. In pursuance to criminal conspiracy, accused Surender Singh arranged candidate Akshay Kumar through accused Kashmir Singh and Asheesh Yadav arranged candidate Mukhtar Ahmed. Both these candidates were provided leaked question paper at Rewari. In pursuance to criminal conspiracy, accused Anil Kumar contacted accused Ashwani Kumar and Pawan Kumar to solicit candidates. Accused Bajinder Singh also solicited candidates through Sanjay Kumar Dutta (investigation on this aspect in underway). In furtherance to criminal conspiracy, accused Ashwani Kumar contacted accused persons namely Kewal Krishan, Raman Sharma, Jagdish Lal, Amit Sharma, Suresh Kumar, Rakesh for arranging candidates. In furtherance to criminal conspiracy, candidates were taken to Karnal and provided leaked question paper in lieu of money. In the entire offence, accused Ashok @ Ashok Pandit, Asheesh Yadav, Sulinder helped the accused in distributing question papers and in booking hotels. In pursuance to criminal conspiracy, accused Ashwani Kujmar and other accused persons of J&K made arrangements for providing leaked question paper to candidates at Gangyal. The accused Jagdish Lal further entered into criminal conspiracy with accused Dr. Karnail Singh, Shubam Kala and others and distributed leaked question paper at the residence of accused Dr. Karnail Singh. Investigation established the role of candidates accused Jaisuriya Sharma, Tarsem Lal and Vikas Sharma in as much as they joined the criminal conspiracy actively participating in the same. They also accessed the leaked question paper themselves. Due to illegal access of question paper before the exam, these and other candidates secured position in the merit list published by JKSSB on 04.06.2022. The JKSSB was deceived into believing that the correct answers marked by these candidates were because of their merit but the actual position was that these candidates had adopted unfair means and had illegally accessed the question paper. As such, above mentioned accused persons, in

criminal conspiracy with one another, cheated the JKSSB. Investigation revealed that the accused have leaked question papers of the other exams also. Investigation revealed that the accused also burnt the leaked question paper to destroy evidence.

20. Therefore, the accused persons have committed offences punishable under sections 120-B r/w 420, 411, 408 and 201 of IPC and substantive offences thereof.”

It is profitable to reiterate here that regular case FIR No. RC0042022A0008 has been registered against the petitioners and other co-accused for commission of offences u/ss 420 and 120-B IPC on 03.08.2022 for the allegations, that the petitioners have entered into criminal conspiracy with the officials of J&K SSB and M/S Merit Trac Bengaluru whereby gross irregularities in the conduct of written examination of the post of Sub-Inspectors in J&K Police conducted by the J&K SSB have been surfaced, petitioner No.1 figures at Serial No. 2 as an accused whereas his son Jaisuriya Sharma figures at Serial No. 13 in the said FIR, petitioners have played key role in the said and have leaked the question papers and supplied the same to the candidates in lieu of money, accused Ashok Kumar-petitioner No.1 in pursuance to the said conspiracy, he arranged vehicles on 25.03.2022 for transportation of candidates from Jammu to Karnal for providing leaked question paper in lieu of money, he sent his son accused Jaisuriya Sharma-petitioner No.2 who is also a candidate to Karnal (who also drove the bolero vehicle owned by Ashok Kumar) and during the travel he was in constant touch with other accused persons. It is trite law that criminal conspiracy is always hatched in secrecy and direct evidence of criminal conspiracy is seldom available. The existence of criminal conspiracy and its objects can be inferred from the circumstantial evidence and from the conduct of the accused/petitioners. As per the response filed by the respondent, it can be safely inferred that conduct of the petitioners are an inferential circumstance which prima-facie establishes that they have hatched criminal conspiracy with the official of J&K SSB and M/S Merit Trac Bengaluru for leakage of the question papers for the examination of Sub-Inspectors post in Police Department in Jammu and Kashmir. From the perusal of response filed by the respondent, it is discernible, that the allegations against petitioners are grave and serious in nature as they have been found indulged in criminal conspiracy with other accused persons in a huge scam of irregularities in the written examination of J&K Police Sub-Inspectors posts in regard to leakage of question papers and their sale in lieu of money, wherein, the investigating agency so far has recovered a cash amount of Rs. 61.79 lacs. Petitioner No.1

being government employee in the rank of Assistant Sub Inspector of J&K Police was required to exhibit his high integrity, official conduct and decorum above board, but has displayed a character of unbecoming of a person of police force. In view of the evidence collected by the investigating agency so far, there is prima-facie or reasonable ground to believe that petitioners have committed the offence indicted against them. The investigation is yet incomplete, more accused persons are yet to be arrested, the scam requires its complete unearthing, therefore, the instigating agency must get sufficient time to complete the investigation and unearth the inter-state gang scam. Arguments of learned counsel for the petitioners that the petitioners are not part of conspiracy as nothing substantial have been found against them, in view of the peculiar facts of the case, are unsustainable in the eyes of law, repelled, rejected and discarded.

8. The nature and gravity of charge is serious as accused petitioners have been found involved in criminal conspiracy with other accused in leakage of question papers and their sale for lieu of money. The offence is against the society as whole as due to the said huge scam carrier of hundred and thousands of candidates/aspirants for the post of Sub Inspector has been ruined/marred. Question paper leakage damages the future of our young generation and this criminal act cannot be compared with scams involving million of rupees, as the said crime is against the society at large. Recruitment scam in government services undermines public confidence in the system, it causes grave injustice to the deserving and meritorious candidates who burn midnight oil to get selected in the service, such scams are therefore considered as anathema to public and social interest. Enlargement of accused/petitioners at this stage is sure to shake the confidence of people at large whose interest are involved in the case. This is a case of huge public importance. The maximum punishment provided for the offences indicted against accused petitioner is seven years which is severe in nature and therefore there is every danger of petitioner/accused to abscond if released on bail. Petitioners/accused since their arrest on 06.11.2022 and 09.11.2022 for the last more than five months are lying in judicial custody in District Jail Amphalla Jammu and do not enjoy special position in the society so as to seek their release on bail. The investigation is yet incomplete and more time must be afforded to the investigating agency to unearth the crime which is of a huge magnitude, and if the petitioners/accused are enlarged on bail at this

stage, there is every likelihood that they will get encourage by their crime and repeat the offence. Petitioner/accused no. 1 being member of police force can influence the prosecution witnesses and dissuaded them from deposing before the investigating agency or before Court thereby influencing the investigation and tempering the prosecution evidence.

9. It is profitable to reiterate here, that a balance has to be struck between the “right to individual liberty” and “interest of the society” and no right can be absolute and reasonable restriction can be placed on it. The grant of bail depends upon the facts and circumstances of each case and it cannot be said that there is absolute rule that because a long period of imprisonment has expired, bail must necessarily be granted. In view of the dictum laid down by Hon’ble Supreme Court in its judgment rendered in a case titled “Rajesh Ranjan Yadav @ Pappu Yadav vs. CBI through its Director [AIR 2007 SC 451] that “the interest of society outweighs the individual interest of a person and the longer period of imprisonment cannot be a ground for grant of bail”. Applying the ratio of the judgment (supra) to the facts of the case in hand, the period of incarceration for about five (5) months of the petitioners in detention is not a ground for their enlargement on bail. There is every danger of the course of justice being thwarted, if the petitioners are enlarged on bail. Offences indicted against them are heinous and grave in nature and such type of offences are to be dealt with severity and with iron hands. Showing leniency in such matters would be really a case of misplaced sympathy. In the instant case, the petitioner no.1 has also claimed bail on health grounds that he is suffering from Ischemic Heart Disease since 2007 which is life consuming and therefore bail has to be mandatorily granted to him. Perusal of annexures II, III & IV appended to the bail application depict that in the year 2007/2008 petitioner no. 1 who at that time was SgCt no. 1307/J was diagnosed as a case of Hypertension and Coronary Artery disease for which PTCA and Stent has been put in LAD at AIIMS New Delhi on 25.04.2007, however, since then, for the last more than 16 years, petitioner no. 1 is hale and hearty as he has been promoted to the rank of ASI in Police Department and presently has not produced any medical prescription indicating therein that he is in immediate danger of his life due to the aforesaid ailment. Moreover, it is reminded that the respondents/UT of J&K are under legal obligation to provide all medical facilities to petitioner no. 1 in judicial custody if required.

- 10.** For all what has been discussed hereinabove, I am of the considered opinion that at this stage when the investigation is yet to be completed, it is the fittest case, where bail ought not be granted and the petitioners/accused too have failed carve out a strong case for bail in their favour. The bail application being misconceived under law is disallowed rejected and dismissed.
- 11.** Disposed of accordingly.

**(MOHAN LAL)
JUDGE**

Jammu
03.05.2023
Vijay

| | |
|---|---------------|
| <i>Whether the order is speaking?</i> | <i>Yes/No</i> |
| <i>Whether the order is reportable?</i> | <i>Yes/No</i> |

