

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 01.08.2022

Pronounced on:10.08.2022

CRM(M) No.99/2022

CrIM No.351/2022

c/w

Bail App No.02/2022

MASHOOQ AHMAD BEIGH

... PETITIONER(S)

*Through: - Mr. G. N. Shaheen, Advocate, with
Mr. Asif Nabi, Advocate.*

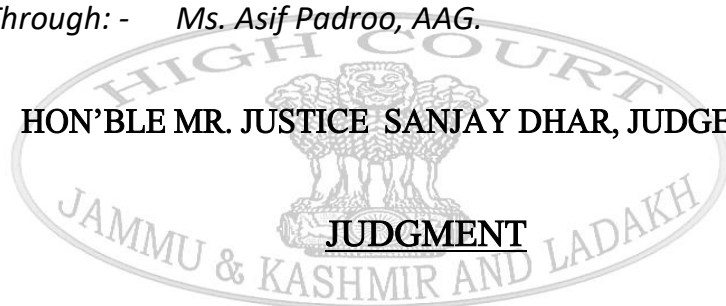
Vs.

UNION TERRITORY OF J&K & ORS

...RESPONDENT(S)

Through: - Ms. Asif Padroo, AAG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE



1) By this common order, above titled two petitions filed by the petitioner, one challenging order dated 15.12.2021 passed by learned Additional Sessions Judge, Anantnag, whereby charges for offences under Section 8/20/29 of NDPS Act have been framed against the petitioner and the other one seeking bail in the case arising out of FIR No.15/2021 of Police Station Crime Branch, Kashmir for the offences under Section 8/20/29 of the NDPS Act, are proposed to be disposed of.

2) As per the case projected in the charge sheet on 14.03.2021, Anti Narcotics Task Force (hereinafter referred to as ANTF) received a specific information through reliable sources that in the truck bearing No.JK02AB-6744, driven by co-accused Suresh Kumar, contraband substance "Charas" has been concealed and that the drug peddler is going to deliver the same outside the Valley. It was also conveyed that the said driver has parked the vehicle in question at Khanabal Qazigund road near Mirbazar Alstop.

3) On the basis of aforesaid information, the FIR (supra) came to be registered in Police Station, Crime Branch, Srinagar, and investigation of the case was set into motion. The services of the Executive Magistrate and the officials from Legal Metrology Department were requisitioned and a photographer was also called on spot. On reaching the desired location, the ANTF found the vehicle in question parked near Mir Filling Station at Alstop, Mir Bazar. The driver of the truck disclosed his name as Suresh Kumar and he was served with a notice under Section 50 of NDPS Act for his personal search in presence of Magistrate/Gazetted officer. As per the option of the driver, he was subjected to search in presence of an Executive Magistrate. Certain articles and cash amount of Rs.5400/ were recovered from the personal search of the driver whereafter he was put under arrest. During questioning, driver Suresh Kumar made a disclosure statement that he had collected 32 packets of charas from some person at Sangam Bijbehara at the behest of owner of the truck,

the petitioner herein, and that he has concealed the same inside the windows of the truck in question. Accordingly, the memo of disclosure was prepared and in pursuance of the said disclosure, 32 packets of charas like substance were recovered in presence of the Executive Magistrate from the place disclosed by the co-accused Suresh Kumar. The recovered charas was found to be weighing 32 kilos and 969 grams. The samples were sealed and sent to FSL for their examination. The statements of the witnesses under Section 161 of the Cr. P. C were recorded. After investigation of the case, offences under Section 8/20/29 of NDPS Act were found established against the petitioner and co-accused Suresh Kumar. The petitioner was arrested on 02.08.2021. Certain other aspects are stated to be still under investigation and it has been submitted in the challan that supplementary charge sheet shall be filed upon completion of investigation on these aspects.

4) After presentation of the challan, the learned trial court considered the material on record and also heard the parties, whereafter impugned order dated 15.12.2021 came to be passed whereby charges for offences under Section 8/20/29 of NDPS Act have been framed against the petitioner and co-accused Suresh Kumar.

5) It appears that the petitioner had approached the trial court for grant of bail but his bail application has been dismissed by the learned Additional Sessions Judge vide his order dated 01.01.2022.

6) The petitioner has challenged the impugned order of framing of charge on the ground that the only material connecting the petitioner with the alleged crime is the confessional statement of co-accused Suresh Kumar, which is not admissible in evidence. It has been submitted that there is no other material on record of the charge sheet that would connect the petitioner with the alleged crime. Thus, according to the petitioner, the order of framing of charge against him is not sustainable in law. On the same ground it has been submitted that the petitioner is entitled to grant of bail.

7) The respondent Crime Branch has filed its reply to the bail application in which, besides narrating the facts mentioned in the charge sheet, it has been prayed that the bail application of the petitioner be dismissed.

8) I have heard learned counsel for the parties and perused the material on record.

9) As already noted, the main and only contention raised by learned counsel for the petitioner is that the petitioner has been implicated on the basis of the confessional statement of a co-accused which is not admissible in evidence and, as such, no case is made out for framing charge against him. In this regard, the Learned counsel has relied upon the judgment of the Supreme Court in the case of **Hari Charan Kurmi and Jogia Hajam and State of Bihar**, AIR 1964 SC 1184, and judgment of this Court in the case of **Rayees Ahmad**

Dar vs. UT of J&K & Ors (Bail App No.05/2022 decided on 21.05.2022)

10) There is no quarrel with the proposition of law that a confessional statement of an accused is not admissible in evidence against a co-accused. The law in this regard is well settled. The question arises as to whether in the instant case the petitioner has been implicated only on the basis of the confessional statement of the co-accused.

11) If we have a look at the challan, a disclosure statement has been made by co-accused Suresh Kumar. In his disclosure statement, he has stated that he obtained the delivery of recovered charas from some person at the behest of the petitioner and that he has concealed the said charas at a particular place inside his truck. Pursuant to the aforesaid disclosure, the charas has been recovered from that particular place. Section 27 of the Evidence Act is an exception to the rule that confession before a police officer is inadmissible in evidence. It provides that when any fact is discovered as a consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Thus, a confessional statement made by an accused in the custody of police which leads to discovery of a fact is admissible in evidence. Thus, the statement of the co-accused Suresh Kumar, to the extent it relates to

the recovery of charas that had been concealed inside the truck, is definitely admissible in evidence. There is also material on record which substantiates the fact that the petitioner happens to be the owner of the truck in question.

12) Apart from the above, during the investigation of the case, the investigating agency has collected call data record of cell phone that was in use of the petitioner as also of the cell phone that was in the use of the co-accused Suresh Kumar at the relevant time. As per this call data record, the petitioner was in touch with co-accused Suresh Kumar during the relevant time and they have exchanged as many as seven calls during this period. Thus, it cannot be stated that the petitioner has been implicated in the alleged crime only on the basis of confessional statement of co-accused Suresh Kumar. In the instant case, besides there being recovery of contraband substance pursuant to the disclosure statement of the co-accused Suresh Kumar, there are other circumstances which includes communication between petitioner and the co-accused and the fact that the petitioner happens to be the owner of the vehicle from which the contraband substance was recovered.

13) It is a settled law that while considering the case for charge or discharge of an accused, the court is not required to enter into deeper appreciation of the facts. The evidence and the material available before the trial court is not to be scanned and evaluated in the manner as if the court has to find whether the accused has committed the

offence or he is innocent. At the stage of framing of charge, the court has only to consider the material for framing opinion as to whether prima facie offence is committed which would require the accused to be put on trial. A strong suspicion is enough to suggest commission of offence by an accused. At the stage of framing of charge, the court has to merely sift the evidence in order to find out whether or not there are sufficient grounds for proceeding against the accused. A meticulous examination of the record, in order to find whether the accused can be held guilty on the basis of the said material, is not to be undertaken.

14) In view of the aforementioned settled principle of law, it can safely be stated that there is sufficient material on record of the challan to connect the petitioner with the alleged crime. The trial court was, therefore, justified in framing the charge against the petitioner and putting him to trial. The jurisdiction of this court to interfere with an order of framing of charge is very limited and in the absence of any grave illegality or perversity in the order framing charge against the petitioner, this Court would be reluctant to interfere with the said order.

15) That takes us to the application of the petitioner seeking bail. Since the order of framing charge for commission of offences under Section 8/20/29 of NDPS Act passed by the learned trial court has been upheld, it is to be presumed that the petitioner has been prima facie found to be involved in the conspiracy relating to possession of commercial quantity of contraband. Thus, the petitioner is deemed to

have committed the same offence as has been committed by the co-accused. Therefore, the rigour of Section 37 of the NDPS Act would get attracted to the case of the petitioner as well.

16) Section 37 of the NDPS Act clearly provides that in cases involving offences relating to possession of commercial quantity of contraband substances, in addition to the restrictions imposed by the Code of Criminal Procedure for grant of bail, certain other conditions have been imposed on the power of the Court to grant bail. These conditions include a prior notice to be issued to the Public Prosecutor so as to give him an opportunity to oppose the bail application. Further, for granting bail to the accused, the Court has to be satisfied that there are reasonable grounds for believing that the person seeking bail is not guilty of such offence and that he is not likely to commit any offence while on bail.

17) The term “reasonable grounds” appearing in Section 37 of the NDPS Act has been interpreted to mean that the Court has to be satisfied that there are credible and plausible grounds for believing that the accused is not involved in the offence.

18) The Supreme Court has recently in the case of **Narcotics Control Bureau vs. Mohit Aggarwal**, 2022 Live Law (SC) 613, after relying upon its earlier judgments on the subject, observed as under:

“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court

to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”

19) In the light of the afore-quoted law laid down by the Supreme Court, let us now analyse the facts of the instant case. As already noted, the petitioner’s involvement in the alleged crime is not based only upon the confessional statement of the co-accused but it is also based upon the fact that the recovery of contraband substance has been effected pursuant to the disclosure statement made by the co-accused making it admissible in evidence under Section 27 of the Evidence Act. Besides this, the petitioner happens to be the owner of the vehicle in question from which the contraband substance was recovered and there is also material on record to show that he was in

constant touch on telephone with the co-accused during the relevant period. Thus, it cannot be stated that there are reasonable grounds for believing that the petitioner is not involved in the alleged crime. The petitioner, as such, is not entitled to grant of bail at this stage.

20) For the foregoing reasons, I do not find any merit in both these petitions. The same are, accordingly, dismissed.

**(SANJAY DHAR)
JUDGE**

**Srinagar,
10.08.2022
"Bhat Altaf, PS"**

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

