

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

B.A. No.174/2017

Date of order:-28.09.2017

Imtiyaz Mahu Ud Din Shah	Vs.	State of J&K
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Coram:

Hon'ble Mr. Justice Sanjay Kumar Gupta, Judge

Appearing counsel:

For Petitioner/Appellant(s) :	Mr.Ch. Mohd Shabir, Advocate
For respondent (s) :	Mr. Amit Chopra, GA vice
	Mr. S.S.Nanda, Sr. AAG

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| i. Whether approved for reporting in Press/Media | : | Yes/No/Optional |
| ii. Whether to be reported in Digest/Journal | : | Yes/No |
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Notice.

Mr. Amit Chopra, learned GA vice Mr. S.S.Nanda, learned Sr. AAG waives notice on behalf of the respondent.

The instant application has been filed by the petitioner for grant of bail on the ground that a false and frivolous case has been registered by the Police of Police Station Nagrota, Jammu under FIR No.120/2017 for commission of offence under Section 8/20 NDPS Act against him and is facing trial which is pending disposal in the Court of 1st Additional Sessions Judge, Jammu. It is further stated that the mother of the petitioner died leaving behind two sisters of the petitioner including the petitioner; the father of the petitioners is an old age and bed ridden. It is further stated that the marriage of two sisters of the petitioner is scheduled on 30.09.2017 to 01.10.2017 as such the presence of the petitioner is required urgently as there is no other male member in the family to arrange the marriage of his two sisters. It is further stated that on 07.09.2017 petitioner moved the bail application before the 1st Addl. Sessions Judge, Jammu, which was dismissed on 20.09.2017.

I have considered the arguments. The concluding para of order of court below reads as under:-

“-----in the instant case, the accused, who is facing trial in this court for commission of offence under Section 8/20 NDPS Act, which involves commercial quantity, is seeking bail on the pleas for attending marriage of his sisters and delivery of his wife. Trial of the case is at initial and not even a single witness has been examined. The allegation against the accused is of serious nature as 5 kg 400 grams charas has been recovered from his possession. So looking into the nature of allegation and the quantity of the charas recovered and keeping in view the evidence on the file, it could be said that there are reasonable grounds to believe that the accused is not guilty of the alleged offence. In view of the bar contained in Section 57 of the Act, regarding the grant of bail, the grounds taken by the accused for seeking bail are not tenable under law. The case law relied upon by the ld. Counsel appearing for the accused is not applicable in the instant case, as the facts of the present case are different as compared to the facts of the case cited by learned counsel for the defence.

Therefore, in view of the aforesaid discussion, the accused cannot be enlarged on bail on the grounds taken by him in the application in view of the rigor of rigor of Section 37 of NDPS Act. Thus the application is dismissed.”

There is no dispute with regard to fact that the quantity of the contraband (5kg 400gm of Charas), recovered from the possession of the accused falls under commercial quantity as per schedule of Act. So rigor of section is applicable. So far contention of petitioner that marriage of his two sisters is scheduled to be held on 30.09.2017 to 01.10.2017 and presence of the petitioner is required urgently as there is no other male member in the family to arrange the marriage, is concerned I do not find any substantial material in file. Even in the marriage card annexed with the file, name of the petitioner has not been mentioned. No affidavit has been filed along with this petition.

In view of the above, I do not find any ground to grant bail to the petitioner, therefore, the instant application is dismissed.

(Sanjay Kumar Gupta)
Judge

Jammu
28.09.2017
Vijay