

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

Cr. Rev. No.20/2017

A. Bail No.39/2017

Date of decision:**08-06-2017**

Mohammad Ramzan Dar & others

Vs.

State of J&K

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir

Appearing counsel:

For the Petitioner(s): Mr. I. Sofi.

For the Respondent(s): Mr. M. A. Beigh, AAG.

i) *Whether to be reported
in Digest/Journal:*

YES/NO

ii) *Whether to be reported
in Press/Media :*

YES/NO/OPTIONAL

1) Instant criminal revision is directed against the order dated 24.05.2017 passed by the Court of learned Sessions Judge, Budgam.

2) In connection with case FIR No.47/2017 for commission offences punishable under Section 436 and 379 RPC, petitioners apprehended arrest so filed a petition under Section 497-A Cr. P. C. Learned Sessions Judge, Budgam, noticing that the offence punishable under Section 436 RPC attracts applicability of Section 497-B Cr. P. C which excludes application of Section 497-A Cr. P. C, has declined to grant such direction. It has been further

observed that the applicants only apprehend arrest and have not been formally arrested, they cannot otherwise seek bail. Application has been held to be not maintainable, accordingly, rejected.

3) According to learned counsel for the petitioners, in terms of Section 497-A Cr. P. C, when investigation is not completed within a period of two weeks from the date of registration of the case vis-à-vis special offences which include Section 436 RPC, then the accused are entitled to be admitted to bail as a matter of right. More than two weeks had elapsed, therefore, petitioners should have been admitted to bail.

4) The question which arises for consideration is as to whether application of Section 497-A Cr. P. C (State Code) is excluded. The answer has to be yes. For facility of reference, Section 497-B Cr. P. C is reproduced here-under:

“497-B. Special provision regarding bail.—notwithstanding anything contained in this Code but subject to the provisions of Section 498, no person accused of an offence punishable under Section 152, 153-A, 295, 295-A, 296, 297, 298, 435, 436 or 505 of the State Ranbir Code shall be released on bail unless—

(a) the prosecution has been given an opportunity to oppose the application for such release; and

(b) the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence :

Provided that the accused shall be released on bail if the investigation has not been completed within two weeks.”

The wording employed “**notwithstanding anything contained in this Code but subject to the provisions of Section 498**” clearly imply that Section 497-A Cr. P. C is not applicable vis-à-vis special offences which include Section 436 RPC.

5) The submission of learned counsel that the petitioners will surrender in the Court, they may be admitted to bail, is not acceptable because that will amount to bail in anticipation of arrest which is clearly barred by Section 497-B Cr. P. C.

6) The order passed by the learned Sessions Judge is un-interferable. Petitioners may choose to surrender before the police and at the same time file a petition under Section 497-B Cr. P. C for release on bail. In case any such application is filed, learned trial court is expected to dispose of the same with promptitude in-keeping with the mandate of Section 497-B Cr. P. C.

7) The petitioners have filed an application under Section 497-A Cr. P. C alongside the revision for grant of

bail in anticipation of arrest. Since Section 497-A Cr. P. C is not applicable, same is not maintainable.

8) Viewed thus, revision petition is found without merit, as such, dismissed alongwith connected application.

(Mohammad Yaqoob Mir)
Judge

Srinagar
08.06.2017,
Bhat Altaf