

Serial No. 229
AFTER NOTICE

IN THE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(THROUGH VIRTUAL MODE)

Bail App. No. 174/2020
CrIM No. 1015/2020

Umesh Kumar

Petitioner(s)

Through:- Mr. Asim Sawhney, Adv.

Vs.

Incharge Police Station CBI and anr.

Respondent(s)

Through:- Ms. Monika Kholi, Adv.

CORAM:-

Hon'ble Mr. Justice Sanjay Dhar, Judge.

(O R D E R)
27-10-2020

01. Through the medium of the instant petition, petitioner has sought bail in case No. RC00420209A004 for the offence under Section 7 of the Prevention of the Corruption Act, registered with the Police Station CBI (ACB), Panama Chowk, Jammu.

02. The facts giving rise to the filing of the instant petition are that the aforesaid FIR came to be registered on the basis of the complaint dated 10.09.2020 lodged by one Mohammad Ashraf Naikoo wherein it was alleged that the petitioner was demanding bribe from him for approving the application of the complainant for grant of airport entry pass. During the investigation of the case, a trap was laid in presence of the independent witnesses and the petitioner was caught red handed while demanding and accepting the bribe of Rs. 5000/- from the complainant.

03. It has been contended by the petitioner that he has been implicated in a false case by the respondents. It is further contended that investigation

of the case is complete and nothing is to be recovered from the petitioner.

It is also urged that as per the law laid down by the Supreme Court in *Armesh Kumar Vs. State of Bihar*, normally accused should not be kept in custody in case where the maximum punishment provided is up to seven years.

04. On the other hand, the respondents have resisted the bail application by filing reply thereto. In their reply, the respondents have contended that the petitioner has committed an economic offence and that such offences are to be treated as a class apart. According to the respondent, the investigation of the case is still at initial stage and the statements of the witnesses are yet to be recorded. The respondents have also contended that the learned trial court has rejected the bail application of the petitioner on justifiable grounds.

05. I have heard learned counsel for the parties and perused the record of the case.

06. It is a settled law that bail is the rule whereas jail is the exception, particularly in the matters where there is no legal or statutory bar in grant of bail. In the instant case, the petitioner is alleged to have committed offence under Section 7 of the Prevention of Corruption Act. The said offence is neither punishable by death sentence nor imprisonment for life. Therefore, the rigor of Section 437(1) (i) Cr.PC is not applicable to this case.

07. In the case of aforesaid nature, grant of bail is within discretion of the Court. However, the said discretion is to be exercised on the basis of

well recognized principles of law and the precedents. The factors that can be taken into consideration is, the nature and the gravity of the accusation, the antecedents of the applicant, the possibility of the applicant to flee from justice, the stage of the investigation, the possibility of the applicants likelihood to repeat similar or other offences and the public interest.

08. Adverting to the facts of the present case, the petitioner is alleged to have been caught red handed while demanding and accepting bribe of Rs. 5000/- from the complainant. Recovery of the bribe amount has already been effected and it is not the case of the prosecution that any further recovery is to be effected from the petitioner, who is stated to be in custody since 10.09.2020. By now investigation of the case must have been taken to its logical conclusion. Therefore, further custody of the petitioner is not going to serve any purpose.

09. The reliance placed by the learned trial court upon the judgments of Supreme Court in *Amit Kumar's and Y.S Jaganmohan Reddy* cases while rejecting the bail application of the petitioner is misplaced inasmuch as the subject matter of these cases was swindling of crores of rupees. You cannot equate a case involving graft of mere Rs. 5000/- to the cases involving alleged fraud of hundreds of crores of rupees. The law laid down by the Supreme Court in the said cases relied upon by the learned trial Court cannot be made applicable to a case of the present nature. The petitioner cannot be refused bail merely on the ground that he is involved in an economic offence. Doing so will amount to

imposition of pre-trial punishment upon him, which is impermissible in law.

10. For the foregoing reasons, the petition is allowed and the petitioner is admitted to bail subject to the following conditions:

01. That he shall furnish personal bond with a surety bond in the amount of Rs. 50,000/- each to the satisfaction of the Incharge of concerned Jail.
02. That he shall co-operate with the investigating agency.
03. That he shall not leave the limits of Union Territory of Jammu and Kashmir except with the prior permission of the I.O concerned.
04. That he shall not try to hamper or tamper with the prosecution evidence in any manner whatsoever.

11. Disposed of accordingly.

(Sanjay Dhar)
Judge

JAMMU
27.10.2020
"Aasif"