

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

BA No. 123/2018

Pronounced on: 24.03.2020

Ramesh Lal

...Applicant/Petitioner(s)

Through: Mr. J. P. Gandhi, Advocate

V/s

State of J&K

...Non-applicant/Respondent(s)

Through: Mr. Aseem Sawhney, AAG

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. Applicant was arrested in FIR No. 91/2004 registered under section 366/109 on complaint filed by Kuldeep Kumar that his daughter of 20 years was missing from his residence from 03.05.2017 alongwith an amount of Rs. 8.30 lakh. It was also alleged that from his account, Rs. 25,000/- was withdrawn through ATM card on 04.05.2017. The complainant has accused the petitioner and one Sandeep Kumar for kidnapping her

02. On the said complaint initially FIR under section 366/109 RPC was registered, however, after investigation challan under section 376/366 RPC was presented against the applicant and Sandeep Kumar. The trial is pending in the court of learned 3rd Additional Session Judge, Jammu.

03. Non-applicant/Respondent has not filed objections despite repeated opportunities.

04. Learned counsel for the applicant submits that applicant and prosecutrix had solemnized marriage with each other, but since they belonging to different caste, therefore, their marriage was not accepted by family of prosecutrix, therefore, a false

and frivolous complaint was lodged by Kuldeep Kumar. The learned trial court has without considered these facts while deciding the application for bail and dismissed the same on 12.05.2018. The only ground for rejection is that releasing the applicant on bail at this state is not genuine. Learned counsel for the applicant submits that the co-accused-Sandeep Kumar has already been admitted to bail but the same is denied to the applicant.

05. Learned counsel for the non-applicant/respondent has opposed the application on the ground that accused is involving in a very heinous offence, therefore he should not admitted to bail.

06. Heard learned counsel for the parties.

07. In Sanjay Chandra v. CBI, 2012 (1) SCC 40, Hon'ble the Supreme Court has held that:

“14 In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, ‘necessity’ is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left

at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

“(22) More recently, in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, this Court has observed that “(j) just as liberty is previous to an individual, so is the society interest in maintenance of peace, law and order. Both are equally important. “This Court further observed that:

116. Personal liberty is a very precious fundamental right and it should be curtailed only, when it becomes imperative according to the peculiar facts and circumstances of the case.”

08. In the case of Prahlad Singh Bhati V. NCT, Delhi, (2001) 4 SCC 280, It was held as under:

“The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of security the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be bail to produce *pima facie* evidence in support of the charge. It is not expected, at this stage, to

have the evidence establishing the guilt of the accused beyond reasonable doubt.”

08. It is not necessary to go into the allegation of the complaint which will be dealt by the trial court. The applicant was arrested on 08.05.2017 and is in continuous incarceration since then. There is nothing on record to indicate that the applicant would abscond or would hamper the trial in any way. It is also been not been stated that applicant had earlier been involved in unacceptable activity or any alleged illegal activity. Considering the principles as laid down in the above-mentioned cases, the principle remains that continuous detention pending completion of trial in this case would cause hardship to the applicant.

09. In view of the aforesaid facts and circumstance, the applicant is directed to be released on bail subject to furnishing of personal bond as well as surety bond each to the amount of Rs. 25,000/- to the satisfaction of the Registrar Judicial subject to the conditions that he will not tamper with the evidence, he shall not pressurize the prosecution witnesses, and he will appear before the trial court on each and every date fixed by the trial court unless appearance is exempted by the court concerned.

10. Disposed of.

11. Considering the present circumstance, the copy of this order as downloaded from the internet (e-court) shall be considered as certified copy.

(Sindhu Sharma)
Judge

Jammu
24.03.2020
SUNIL-II

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