

COURT OF ADDITIONAL SESSIONS JUDGE KATHUA

Case No. 39/2024
CNR No. JKKT010004182024
Date of Institution : 14.02.2025
Date of Order : 22.02.2025

Sudershan Khajuria S/O Late Sh. Madan Lal
R/O Ward No.02, Near PWD Colony, Kathua
Tehsil and District Kathua (J&K)

..... (Applicant)
Through:- M/S Ajat Shatru Sharma, Neeraj Sharma & Swapnil Jasrotia ,
Advocates

V/S

UT of J&K through Incharge, Anti Corruption Bureau Jammu.

.... (Non-applicant)
Through:- Mr. Rajesh Sharma, Spl. PP

FIR No. 01/2025 of Police Station J&K Anti-Corruption Bureau Jammu
Offence U/S 7 of Prevention of Corruption Act 1988 and section 61(2) BNS

In the matter of:- An application for grant of bail in favour of the applicant.

CORAM :

Pravin Pandoh
J.O.Code JK00157

ORDER

1. By virtue of the present application, applicant/accused Sudershan Khajuria has sought the indulgence of this court for admitting him to bail in above referred case/FIR on the ground that he is an innocent person, belongs to respectable family and has not committed any offence, but police of ACB Jammu/Samba/Kathua range has lodged false and frivolous FIR vide No. 01/2025 under section 7 of Prevention of Corruption Act 1988 against him and has arrested him. That no recovery is to be effected from the applicant. That the offences alleged are not punishable with life or death so bar for grant of bail is not attracted in these cases and non-grant of the relief will place embargo on the personal liberty. That custodial interrogation is no longer resintegra in the present role of criminal jurisprudence. That the bail is rule and its refusal is an exception and present case does not fall in the category of exception. That the applicant is ready to furnish bail bonds and surety bonds to the entire satisfaction of this court and also undertakes to abide by any condition which may be imposed by this court while enlarging him on bail.


Add. Sessions Judge
Kathua

Prayer has been made for grant of bail in favour of the applicant.

2. The report has been called from concerned police station and Ld. Spl. PP has also been directed to file objections.
3. As per police report, on the complaint of complainant namely Kewal Krishan S/O Sh. Manu Ram R/O Khanpur, Tehsil Marheen Kathua filed before Sr. Superintendent of Police Anti Corruption Bureau Jammu on 10.02.2025 a case vide FIR No. 01/2025 under section 7 PCA has been registered against the accused Sudershan Khajuria the then Patwari Halqa Khanpur with the allegations of demanding bribe of Rs. 30,000/- from the complainant in lieu of correction of Girdawari entry in the revenue record pertaining to the land of the complainant falling under Khasra Nos. 250 and 346. After registration of the FIR during the pre trap proceedings the SD card used for recording the conversation held between the complainant and the accused was sealed and seized on spot. During the course of investigation of the case, a successful trap was laid wherein applicant/accused was caught red handed while demanding and accepting bribe from the complainant in presence of witnesses. Accused after accepting the bribe money from the complainant kept the same in the right front pocket of the jeans pent worn by him but on noticing the movement of the ACB team members the accused tried to escape and rushed outside his office room from the other door, took out the bribe money from his (pent) pocket and threw the GC notes outside the boundary wall of the office. One of the GC note while throwing fell inside the boundary wall whereas 29 GC notes fell outside the boundary wall of Patwar Khana, Khanpur which were recovered from the respective places by independent witnesses and seized through separate seizure memo in presence of independent witnesses and team members. During post trap proceedings right hand wash, left hand wash, pent pocket wash, handkerchief wash, jeans pent worn by the accused, handkerchief recovered from the right pocket of Jeans pent worn by the accused, SD Card used for recoding the conversation held between the complainant and accused Sudershan Khajuria during trap proceeding and Mobile phone of accused were also sealed/ seized on spot. The paper slips on which the no. of GC Currency notes were recorded by the independent witness was also seized through separate seizure memo. The accused was taken into custody, who is presently on police remand and is in the custody of P/S ACB Jammu.
4. Ld. Spl. PP has filed the objections wherein he has controverted the application inter alia on the grounds that accused is involved in the commission of grave,


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heinous and non-bailable offence, as such, he cannot claim bail as a matter of right. That the motive behind the criminal act committed by the accused was to demanding /accepting the bribe from the complainant in which the involvement cannot be overruled at this stage, as such, the custody of the accused is must to ascertain the same and the modus operandi so adopted. Moreso, the grant of bail at this stage will embolden the accused further and will give a wrong signal in the society, encouraging the likeminded persons to indulge in similar crime which would be against the interests of the society. In case bail is granted to the accused, he will abscond thereby jeopardizing the investigation and trial of the case. Moreso, the investigation of the case is going on, no leniency can be taken while granting bail to the accused and the accused person has not established a good ground at this stage. Prayer has been made for rejection of the bail application.

5. Ld. counsel for the applicant/accused has submitted that the accused is innocent and is not involved in any commission of offence and he has been falsely implicated by the police. On the contrary, Ld. SPP has argued that the accused is involved in heinous and non-bailable offence under Prevention of Corruption Act, as such, bail may not be granted to him and prayed for rejection of the bail application.

6. Heard the rival arguments and also perused the necessary record indispensable for the just disposal of this bail application.

7. As per the police report, the accused /applicant has allegedly committed the offence under section 7 of Prevention of Corruption Act 1988 and he has been caught red handed while accepting bribe of Rs.15000/- from the complainant for entering the name of the complainant in revenue record.

8. Section 7 of P.C. Act carries punishment of imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine, as such, same does not carry death sentence or imprisonment for life which may create an absolute impediment in considering release of applicant on bail when he had already spent about ten days in custody with the Vigilance Organization facilitating the custodial interrogation. Most of the investigation is conducted on spot after the alleged seizure of trap amount from the applicant.


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9. It is true that corruption is rampant in the society and its tentacles are spreading with alarming speed affecting proper governance and credibility of the society itself- But, what is the remedy? - And should the Court, adopt a different approach in considering the release of persons accused under the corruption cases than the one which is adopted in case of other offences.
10. So long as there were no such Special provisions in force providing severe punishment and stringent provisions regarding bail during investigation and trial of cases under the Prevention of Corruption Act and such like other Laws, persons accused of offences under the Prevention of Corruption Act, 2006, cannot, in my opinion, be treated differently to deny them consideration for bail during investigation and trial merely because they were alleged to be involved for infraction of offences under the Prevention of Corruption Act, 2006.
11. While considering release of persons accused of offences under the Prevention of Corruption Act, general principles governing grant or refusal of bail and provision of Section 497 of the Code of Criminal Procedure are undoubtedly required to be kept in view, and bail in such non-bailable offences may not be claimed, as of right, and in the absence of any special circumstances warranting refusal of bail, the well recognized principle that bail is the rule and its refusal an exception would always be a guiding factor for the Courts while considering the grant or refusal of bail in such cases. [Mohd Razak And Anr. vs State Of J And K And Anr. on 16 April, 2007].
12. Argument of Ld. Spl.PP that the applicant would tamper with the prosecution evidence too appears to be conjectural and a mere surmise. The applicant has remained under custodial investigation for the last more than ten days. Therefore, I do not think it to be appropriate to keep the applicant in the custody any more lest his detention in police custody may amount to punishment sans trial. The investigation of the case is almost complete and the alleged bribe money has already been seized by the police and nothing is to be required to be recovered from the applicant. Moreso, perusal of Section 7 PC Act brings it to fore that none of the same, carries death sentence, or life imprisonment. As such, further detention of the applicant with police will not serve any purpose, rather same will amount to pre-trial punishment. Moreso,

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bail is rule and its refusal is an exception.

13. For all what has been said above, the application in hand is allowed and applicant Sudershan Khajuria is admitted to bail on his furnishing bail bond to the tune of Rs.50,000/- and personal bond of the like amount, subject to the following conditions:-

- (i) That the accused/applicant shall co-operate with the investigating agency;
- (ii) That he shall not hamper and tamper with the prosecution evidence in any manner whatsoever;
- (iii) That he shall not leave the jurisdiction of this court without prior permission;
- (iv) That he shall appear before the concerned I.O as and when called by him.

In case of any violation, prosecution is at liberty to approach this court for cancellation of the bail of the present accused. Accused be released if he is not required in any other case.

14. Application in hand is disposed off accordingly. Be consigned to records after due compilation.

Announced
22.02.2025


(Pravin Pandoh)
Additional Sessions Judge
Kathua