
COURT OF 2ND ADDITIONAL SESSIONS JUDGE, SRINAGAR.

CNR No:JKSG0100 3265- 2022

Date of Institution : 21-10 -2022

Date of Decision: 07-11-2022

In the case of:

Manzoor Ahmad Mir

S/o Abdu Aziz Mir

R/o Kachan Ganderbal, through his next friend Suhail Ahmad

Mir S/o Ghulam Ahmad Mir

R/o Ganderbal.

(Petitioner/Accused)

through Advocate Showkat Khan

Versus

Union Territory of J&K through

SHO P/S Bemina Srinagar.

through Additional Public Prosecutor.

Case FIR No. **116 of 2022**

Offences under Section **8/22 of NDPS Act**

In the matter of :

Petition for grant of bail.

Coram: Mohammad Ashraf Bhat

J.O.Code: JK-00108

O R D E R.

1. Bail of the accused is sought on the grounds that he has been arrested by the police concerned without any reasonable cause or justification on frivolous grounds. That the petitioner is purely innocent and has not committed any offence and his innocence is beyond all shadow of doubts. The police has shown to have recovered contraband substances from alleged accused which is far from truth which makes it clear that the police under a deep conspiracy tried to involved the applicant in the aforesaid false and frivolous case. The applicant is reputed contract or by profession and has earned name and face in his respective field. The alleged contraband was never recovered from the possession of the applicant. The investigation of the case is almost complete in the case as such presence of the applicant either in police lock up or on judicial custody is no more required and he deserves to be released on bail so that he could defend himself. The quantity of drug allegedly seized from the accused is an intermediate quantity as such the rigor of Section 37 of NDPS Act is not attracted. That bail is a rule and jail only exception and further detention of the applicant is not justifiable and

reasonable by any canon of law. The purpose of the bail is not to exonerate the petitioner of the charges but is merely shift of the custody to sureties who undertake to produce him before the court during the trial. That the petitioner in case released on bail would not hamper or tamper with the prosecution evidence and will abide by all terms and conditions in this behalf imposed by this Court.

2. Report was sought from the police same has been filed , Perusal whereof reveals that on 18-10-2022, Incharge Naka party has sent a docket to police Station Khanyar to the effect that he along-with his associates was performing naka checking on Bemina Bypass near Police Public School and in the meanwhile a person after seeing the naka party tried to fled away from the spot , but police succeeded in apprehending him tactfully, who on his preliminary questioning disclosed his name Manzoor Ahmad Mir S/o Abdu Aziz Mir R/o Kachan Ganderbal. On search a bag containing 4 bottles of medicine ISOREX 100 ML each containing psychotropic substances codeine was recovered on spot. The accused could not provide any explanation much less plausible. On receipt of this report case FIR No. 116 of 2022 for the commission of offence punishable under Section 8/22 of NDPS Act was registered and investigation ensued. During investigation spot inspection was conducted, site map was prepared, the recovered medicine was seized, seizure memo was prepared, sample of the seized contraband was sent to FSL and report whereof is awaited. The accused was taken into custody on 18-10-2022.

3. The learned APP has resisted the application for grant of bail by contending that the report submitted by Police Station suggests in clear terms about the involvement of the accused in FIR No.111/2022 for offence punishable under Section 8/22 NDPS Act. The offence in which the above named accused is involved are grave and serious in nature, as such the accused is not entitled to the concession of bail. That as per the police report 4 bottles of of Isorex has been recovered from the possession of the accused as such accused has

committed heinous offence. That the petitioner is involved in the commission of offences which is a heinous crime, against the Society, knocking every door in respective societies and same is to be dealt with iron hands. The investigation of the case is going on and in case accused is admitted to bail, the accused will misuse the concession of bail, which will defeat the process of law. The accused is a drug peddler and in case of his release he will continue with such activities, which is against the larger interests of the society

4. Heard ld counsel for the accused as well as the learned APP. The learned counsel for the petitioner argued that no doubt intermediate quantity of narcotic drug is allegedly recovered from the petitioners/accused, the accused deserves the concession of bail as rigor of Section 37 is not attracted to instant case. The ld. APP on the other hand has stiffly objected the grant of bail in favour of the accused on the ground that the accused has committed serious and heinous offence besides antisocial as such he does not deserve to be released on bail.

5. Considered the arguments advanced. I have also perused the bail application, the police report and objections filed by the learned APP. It emerges that moot question which requires determination in the first hand is whether strict bail provision/rigor envisaged under Section 37 NDPS Act are attracted in the instant case or not. Section 37 of Narcotic Drugs and Psychotropic Substance Act reads as under:-

37. Offences to be cognizable and non-bailable.

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

a) every offence punishable under this Act shall be cognizable,

b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
- (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

2. The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

6. A bare perusal of Section 37 of Narcotic Drugs and Psychotropic Substance Act would make it manifest that bar to grant bail envisaged under this section is only with respect to offences punishable under Sections 19, 24, or Section 27-A of the Act and for offences involving commercial quantity of a Prohibited Drug or Narcotic Substance.

7. To facilitate the determination of question under consideration it becomes desirable to find out whether quantity of contraband allegedly recovered from the main accused is commercial quantity or not. It would be relevant to take note Notification No. 1055(A) dated 19-10-2001 specifying small quantity and commercial quantity ;-

S. No	Name of Narcotic, Drug and Psychotropic substance(international non proprietary name INN	Other non proprieta ry name	Chemical name	Small quantity name	Commercial quantity in gm/kg
1	2	3	4	5	6
	Codeine	-	-	10 gms	1000 grams

Therefore upon the juxtaposition of alleged recovered psychotropic substance(Codeine) narrated herein above, it would appear that 4 bottles 100 each total 400 grams of medicine containing codeine has been recovered from the applicant/accused which falls within intermediate quantity. Consequently, strict bail provision as contained under Section 37 NDPS Act are not attracted

in the instant matter. That being the position, therefore, contention of APP fails.

8. Of particular relevance is to note that bail plea of the accused/petitioner is to be considered in view of the provisions of bail as contained in Code of Criminal Procedure. Here it may be stated that character of evidence, circumstances which are peculiar to the accused reasonable possibility of the presence of the accused not being secured trial, reasonable apprehension of witnesses being tempered with, the larger interest of public or state are also the matters which are taken into consideration while dealing with the grant or refusal of the bail. Since, the commission of offences alleged against accused/petitioner do not carry sentence of death or imprisonment for life therefore, the bar to grant of bail under Code of Criminal procedure is also not attracted to the case of the petitioner. Prosecution has not alleged any criminal background to the accused, as such, it cannot be presumed that he has the capacity to influence the prosecution witnesses who in the instant case are mainly police officials. Besides accused is a local resident and thus, has roots in the society as such, is unlikely to flee from justice or to jump the bail, if granted. Since, law presumes accused person to be innocent till proved guilty after trial and therefore, keeping accused in custody would tantamount to pretrial punishment, which is not permissible under law. Further it is settled law that Bail is the rule and Jail only an exception. Prosecution has not brought anything on record to prompt this Court to follow the rule in breach.

9. For all what has been stated and discussed herein above and taking into consideration the facts and circumstances of the case in its entirety, the quantity of psychotropic substance seized from the possession of accused, the fact applicant/accused is languishing in custody since 18/10 /2022, therefore without commenting anything on the merits of the case, I am of the considered opinion that petitioner at this stage has carved out a case for grant of bail. Therefore, the petitioner, is accordingly admitted to bail subject to his

furnishing of a bail bond in the amount of **Rs. 1,00,000/-** and a personal bond of like amount (provided he is not involved or required in any other case or offence). However the bail granted shall, be subject to the following conditions;

1. That the accused/petitioner shall remain present before I.O as and when directed, to do so till completion of the investigation.
2. That the accused shall not tamper with the prosecution evidence and will not try to win over the prosecution witnesses
3. That the accused will not leave the UT of J&K without prior permission of this court.

The bail application is accordingly disposed of and shall be consigned to records after due compilation.

Announced
07-11-2022

2nd Addl. Sessions Judge,
Srinagar