

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

(THROUGH VIRTUAL MODE)

Reserved on: 02.12.2020

Pronounced on: 15.12.2020

CrIM No. 168/2020 in

CRA No. 1/2018 c/w

i) CRREF No. 2/2018

ii) CRA No. 3/2018

Hilal Ahmad Yatoo

.....Applicant(s)

Through :-

Mr. S. T. Hussain, Sr. Advocate with
Ms. Nida Nazir, Advocate.
(through virtual mode)

V/s

State of J&K and another

.....Respondent(s)

Through :-

Mr. B. A. Dar, Sr. AAG
(through virtual mode)

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

ORDER

RAJNESH OSWAL J.

CrIM No. 168/2020

1. The present application has been filed by the applicant/appellant after his first bail application was rejected by the Court on 16.11.2018. The applicant has filed the present application on the ground that the applicant was convicted vide judgment dated 30.12.2017 for life imprisonment and a fine of Rs. 50,000/- for commission of offence under section 302 RPC, and further imprisonment for life and a fine of Rs. 50,000/- for offence under section 120-B RPC. The applicant has remained in custody for nearly nine years and because of the judgment of the Apex Court that, if a person remains in lockup even in a murder case for more

than ten years, his case should be considered for grant of bail. The applicant has pleaded that in identical case, titled, “Irfan Ahmad Bhat vs State”, the Coordinate Bench has granted the bail and, therefore, on the principle of parity, the applicant is also entitled to bail.

2. Mr. S. T. Hussain, learned senior counsel appearing for the applicant/appellant has vehemently argued that because of the subsequent events, i.e. the applicant has remained in custody for up to nine years and also because in the identical matter, the bail was granted to the appellant therein by the Coordinate Bench so the applicant too is required to be enlarged on bail on the ground of parity. Learned senior counsel has also raised certain grounds that the applicant could not have been convicted for commission of offence under section 120-B RPC and has also raised the factual issues, those pertain to the merits of the case. Mr. Hussain lastly has vehemently argued that on account of delay in disposal of the appeal also, the applicant is required to be enlarged on bail.

3. Objections have not been filed by the respondents. Mr. B. A .Dar, learned Senior AAG has vehemently argued that each case is to be decided on its own facts and circumstances and the case of the applicant is different vis-a-vis the accused in Irfan Ahmad Bhat’s case

4. Heard and considered.

5. A perusal of the record reveals that the applicant has been sentenced to imprisonment for a life for commission of offences under sections 302 RPC and 120-B RPC separately and a fine of Rs. 50,000/- has also been imposed upon the applicant twice as well as other co-accused. The applicant has been convicted after full fledged trial and contentions regarding the merits of the appeal cannot be appreciated by this Court while

deciding the application for grant of bail and suspension of sentence. So far as the contention of learned counsel for the applicant regarding the grant of bail to the appellant in **Irfan Ahmad Bhat's case** (supra) is concerned, the applicant therein had remained in custody for 11 years, 05 months and 06 days whereas the applicant herein was arrested on 23.01.2012 meaning thereby the applicant has remained in custody only for a period of 08 years and 10 months so the applicant cannot claim bail and suspension of sentence as a matter of right on the basis of parity as the custody of the appellant therein was much more than that of the applicant herein.

6. In **Akhtri Bi v State of Madhya Pradesh, AIR 2001 SC 1528**, it has been held that if an appeal remains pending for five years and there is little chance of appeal being heard in near future, in such case a convict would be entitled for consideration for suspension of his remaining sentence.

7. The case of the applicant is also not covered by the judgment of the Apex Court in **Akhtri Bi's case (supra)**. The appeal by the applicant is filed only in year, 2018 and we are also not averse to consider the appeal of the applicant on merits.

8. In view of what has been discussed above, we find no merit in the instant bail application, as such, the same is dismissed.

9. List the main appeal for consideration on 05.02.2021.

(RAJNESH OSWAL)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
15.12.2020
Rakesh

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