

IN THE COURT OF SPECIAL JUDGE DESIGNATED UNDER NIA ACT
SRINAGAR

<u>R. No.</u>	<u>Date of Institution</u>	<u>Date of Order</u>
74/2024	01-03-2024	10-05-2024

Asif Sultan Syeda S/o Mohammad Sultan Syeda R/o Firdous Abad
 Batmaloo Srinagar. **...Applicant.**

V/s
 UT of J&K through P/s Rainawari
FIR No. 19/2019
 U/Ss 147,148,149,336,427,332,307,435,436 RPC.
 U/Ss 13, UA (P) Act. **...Non-applicant.**

In the matter of:- Application For Grant Of Bail.

Present APP for the UT of J&K

M/s. M.A. Pandith Advocate & Associates for applicant.

CORAM: Sandeep Gandotra

ORDER

1. The applicant/accused person has sought the indulgence of this court seeking his admission on bail inter-alia on the grounds that Police Station Rainawari has without any reason or rhyme arrested the aforementioned accused through he is innocent and has not committed any offence of whatsoever in nature: that the applicant was facing incarceration for last more than 05 years but Police Station concerned without any reasonable justification has arrested the accused as it is evident from the circumstances of the present case that the accused was already undergoing through the PSA which has been now quashed few days back and it would also be expedient to brought before this court that the accused has no connection with the above mentioned FIR as he was under detention and how could a person commit a crime when he is already going through the detention. is a peaceful citizen of union territory and the accused is peace loving, law abiding citizen having a high social status and a highly esteemed repute and honor in the locality society and in his neighborhood; that no prima facie case is made out against the aforementioned accused for

the commission of offences alleged in the fir and he is not even remotely connected with the commission of offences alleged in the FIR and he is not even remotely connected with the commission of offences as such, he is facing detention without any reason and justification; that the position of law is clear and well settled on the point that the accused is presumed to be innocent till the guilt is proved beyond reasonable doubt: that the purpose of bail is not to exonerate an accused of his charges but it is merely shift of custody of sureties who undertake his presence before the authorities and the accused is ready to furnish sufficient sureties to the satisfaction of this court; that the accused/applicant is innocent and has not committed any offences; that the applicant/accused is a permanent resident of UT of JK and his roots are deep in the soil. He is possessed of immoveable property, as such he cannot flee the course of justice in case he is admitted to bail. Finally the release of applicant on bail has been solicited.

2. Police report was called which reveals that the allegations against the accused/ applicant is that on 04-04-2019 the accused along with other jail inmates in the Central Jail Srinagar set ablaze few barracks, shouted anti national slogans and pelted stones on jail employees due to which some officials sustained injuries.
3. Accordingly, case FIR No. 19/2019 was registered in P/S Rainawari and investigation was set into motion. On reaching the spot Senior officers/DM Srinagar alongwith subordinate Magistrates, SSP Srinagar, SP North and SDPO Khanyar, the violent mob pelted stones on them in which SDPO Khanyar and SP North City sustained injuries. During the course of investigation the IO prepared the site plan, recorded the statement of witness etc. The services of FSL Srinagar have been utilized. The combustible materials were seized on spot and sent to FSL for expert opinion. The CCTV footage has also been collected and seized. The details of accused persons alongwith their photographs (History Tickets) were collected from the jail and were seized and sealed. The seized history tickets as wells CTTV footage were sent to CFSL Gujarat for comparison; however the opinion is still awaited. The 26 persons including the applicant/accused were found involved in the commission of crime, who are facing trial in other cases. While most of the accused are still lodged in different jails outside the UT of J&K of J&K, so far 04 persons namely Sameer Ahmad Khan, Imran Aslam Baba, Arif Ahmad Sheikh, Imran Nabi Khan and Asif Sultan and

Eycon Parvaiz have formally been arrested in the instant case; while as the arrest of other accused is pending as they lodged at different jail within and outside the UT of J&K . Accused Asif Sultan and Eycon were arrested on 29-02-2024 and currently lodged in judicial custody.

4. Prosecution has opposed the application stating that keeping in view the seriousness of the allegations the bail application shall be rejected. That, there is credible and cogent evidence available at the strength of which it can be safely submitted that there are reasonable grounds to believe that the accused person is involved in the commission of above referred offence, as such grant of bail at this stage will cause impediment in the smooth conduct of investigation. That, the offences and activities in which the above named accused person is involved being highly antinational. Lastly it is prayed that the bail application be rejected in the interests of justice, society and nation at large.
5. Heard Ld. Counsel for the petitioner, Ld. APP for the UT of J&K. I have perused the contents of the application, police report, and objections have applied my mind in the present facts and circumstances of the case.
6. Learned Counsel for the accused /applicant has argued that there is no direct evidence on record which could implicate the accused person/applicant with the commission of crime. He has argued that the whole case of prosecution is based upon alleged shouting of anti national slogans and pelting of stones on the jail/police officials. He further argued that the case is of the year 2019 and the accused was not present at the place of occurrence. Lastly, it is requested that the accused person/applicant is in custody for the last approximately 72 days and therefore he should be granted bail in the interest of justice.
7. The Learned APP has resisted the bail applications and has prayed for dismissal of the same. He has forcefully argued that the accused person is involved in serious offence which impinges upon the peace and security of the state and society in general. Further, none of the rights of the applicant/ accused has been infringed and this bail application filed for the release of accused person is premature and does not carve out a case for bail.
8. It is settled position of law that while granting/refusing bail the court has to exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit

of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail is being granted particularly where the accused is alleged of having committed a serious offence.

9. It is also necessary for the court to consider, among other circumstances, the following factors before granting bail :-

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) Prima facie satisfaction of the court in support of the charge.
- (d) Impact of such offences on larger public interest.

10. There can be no dispute at all that so far as the investigation into allegations of commission of offence under the Unlawful Activities (Prevention) Act, 1967 is concerned, that there is compelling state interest in tackling such serious crimes. However, mere use of this statutory provision would not ipso-facto warrant rejection of applications of bail ignoring the other binding requirements.

11. It is now well-settled by a catena of decisions of Apex Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The two most important considerations that would determine the granting or refusing the bail to the accused are the likelihood or otherwise of the accused absconding or attempting to tamper with the prosecution evidence. Undoubtedly, the other consideration shall also weigh for consideration of a bail matter.

12. In this case, the accused person/applicant has been booked for the offences under sections 13 UAPA Act, 147, 148, 149, 336, 427, 332, 307, 435, 436/IPC. As such, the embargo contained under chapter VI & VI of ULA (P) Act, is not attracted in the present case. In the humble opinion of this court, the occurrence took place more than 5 years ago and sufficient time of approximately 2 ½ months (72 Days) has been given to the investigating agency for the custodial interrogation of the accused/applicant. The accused/ applicant was already under PSA till Feb 2024. Further, it has not been brought to the notice of this court that the conduct of accused person/applicant in judicial custody is such that does not warrant the release on bail. The further detention of the accused person/applicant in the custody shall not serve any purpose. Admittedly, the applicant is the permanent residents of

J&K, thus his chances of fleeing from justice are remote.

13. Having regard to the facts and circumstances of the case, the nature of the allegations against the accused & the punishment prescribed for the same, the period of detention of the accused i.e. the accused has been in the custody from the last 72 days, the fact that the recovery has been made from the place of occurrence and sent to FSL and most of investigation has been completed, the interest of justice will be served in case the applicant is admitted to bail, at this stage.

14. As such, the petitioners/accused person is admitted to bail provided that he shall furnish bail bond to the tune of Rs.1,00,000/- each with one surety in the like amount subject to the following conditions:-

- a) That the accused/applicant shall appear before the IO of the case as and when required;
- b) The accused person/applicant shall not in any way misuse there liberty nor shall they get in touch with any of the witnesses or try to influence the course investigation.
- c) That the accused person/applicant shall not temper with the evidence of the prosecution in any manner;
- d) That the accused person/applicant shall not leave the territorial jurisdiction of this court without prior permission of the court.
- e) That the accused person/applicant shall not change his residence during the period of bail, without informing this court;
- f) That the accused person/applicant shall disclose/provide their mobile numbers issued in his name along with telecom network to Investigating Officer/ SHO of concerned police station;
- g) That the accused person/applicant shall neither use any secret/encrypted messaging apps or any proxy network (viz VPNS) to remain anonymous and circumvent provisions of India Telegraph Act and Indian Wireless Act and orders/restrictions issued there under nor provide any type of telecommunication facility from his number or device to other person through hotspot, WiFi etc.
- h) That, accused person/applicant shall will disclose the details of cell phone device to be used by him (IMEI number and make MI, Samsung, Oppo etc) to the investigating officer/ SHO of concerned police station;
- i) The accused person/applicant shall not use any mobile number or device other than the ones disclosed to the Investigating Officer /SHO of concerned police station;
- j) In case the accused person/applicant wants to buy another mobile handset or a new SIM Card in the event of damage, loss theft or to upgrade, he shall

seek prior permission from this court and shall furnish the information to the IO of the case/ SHO of concerned police station; and

k) That the accused/applicant shall not commit any offence in the future.

15. It is made clear that any observations made in this order are purely from the stand point of narration of events and shall not be taken as reflection on merits of the matter or touching upon the rival contentions advanced by the parties.

16. The application for bail is accordingly disposed and shall be consigned to records after due compilation u/r.

Announced
10.05.2024

Additional Sessions Judge
Special Judge Designated
Under NIA Act Srinagar
JO Code – JK00116