

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) No. 447/2023,
CrI M No.1057/2023,
CrIM No.404/2024

Pronounced on: 06.09.2024

(i) Shagufta Bano, Age 37 Years, Petitioner/Appellant(s)
W/o Bashir Ahmad Wani,
R/o Doolipora, Pharthan,
District Budgam

Through:- Mr. Mir Majid Bashir, Advocate
Mr. Tawfiq Hussain Khawaja, Advocate.

V/s

(i) UT of J&K,Respondent(s)
through Station House Officer,
Police Station, Budgam

Through:- Mr. Faheem Shah, G.A.

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

01. This petition has been filed by the petitioner-Shagufta Bano through her husband-Bashir Ahmed Wani, under Section 482 of the Code of Criminal Procedure, read with Section 439 of the CRPC, seeking quashment/setting aside of the order dated 10.08.2023, passed by the learned Additional Sessions Judge, Budgam, in the bail application titled "*Mst. Rumiya and others vs. UT through P/s Budgam*".

02. The petitioner was arrested on 27.10.2022 in FIR No. 370 of 2022 for offences under Section 370 IPC and Sections 14A and 14C of Foreigners Act, 1946, at Police Station Budgam. Investigation in the case was set in motion pursuant to FIR No. 370/2022 and the accused persons namely (i) Mst. Shagufta W/o Bashir Ahmad Wani, (ii) Mst. Asmat Ara W/o Mohd.

Shafi Wani and; (iii) Mohammad Shamim Bhat S/o Abdul Rahman Bhat, all residents of Dolipora, were apprehended. During search of the house of accused persons, non-local girls were recovered from their residential house. After investigation, it was established that the accused persons Mohd. Shamim Bhat, Mst. Shagufta, and Mst. Asmat Ara were arrested on 27.10.2022 for offences under Section 370 IPC.

03. These three accused persons applied for grant of bail before the learned Judicial Magistrate First Class, Budgam, and interim bail was granted to them vide order dated 25.11.2022, which was made absolute on 28.12.2022. Subsequently, fourteen other accused, who were women from Myanmar were arrested in the case, applied for bail before the Court of Special Mobile Magistrate (Sub-Judge), Budgam, but the bail was denied to them vide order dated 26.12.2022.

04. The final report (Challan) was presented under Section 370 IPC read with Sections 14A and 14C of the Foreigners Act, 1946, against 20 accused. Accused Nos. 1 to 14 were in judicial custody and were also present. The petitioner and two others who were out on bail were also present.

05. The accused who were in custody preferred bail application before the trial Court, i.e., Additional Sessions Judge, Budgam. The learned Additional Sessions Judge, Budgam, rejected the bail application of the 14 accused vide order dated 10.08.2023 and while rejecting their bail applications also *suo motu* cancelled the bail granted in favor of the petitioner and Mst. Asma Ara, and took them into custody on 10.08.2023 and remanded them along with other fourteen persons to the Central Jail, Srinagar.

06. The petitioner, aggrieved of the order dated 10.08.2023, has approached this Court by way of this petition and seeks grant of bail.

07. The contention of the petitioner is that while rejecting the bail application of 14 co-accused, the learned trial Court improperly exercised its power without issuing any prior notice, thereby cancelled the petitioner's bail and remanded her into judicial custody, as such, the impugned order is unsustainable and bad in the eyes of law.

08. It is submitted that the trial Court, in ordering the judicial custody of the petitioner, failed to appreciate that neither the rigour of Section 437 CrPC is applicable to the petitioner nor is there any direct or indirect evidence implicating her in the alleged offences. It is also submitted that the petitioner, being a victim herself, has been wrongly accused under extreme circumstances. It is further submitted that the petitioner is a mother of two children and has been married to a local native for a long time and is residing in Doolipura, Budgam with her husband and with her minor girl child who is only 1½ years old and requires her care.

09. It is also averred that the Court below, made an observation that the accused persons are involved in serious offences related to human trafficking and their sexual exploitation and prostitution but these are without any basis or substantial evidence, as the petitioner herself is the victim of the same.

10. Mr. Faheem Shah, learned G.A., appearing on behalf of the respondent, submits that after the registration of FIR, accused Nos. 06, 07 and 01 non-local girls namely, Shamim Ahmed Bhat, Mst. Shagufta Bano, and Mst. Asmat Ara were found during the search of the house of the accused persons,. They were questioned about the presence of non-local

girls in their house but they failed to provide any justification for the same and offence under Section 370 IPC was established during the investigation. It was revealed that the petitioner is originally a resident of Burma and has been married to Bashir Ahmed Wani for the past 13 years without valid documents. It is further alleged that both accused were involved with people like Ayaz Ahmed, who facilitated bringing women from Burma without proper documentation for prostitution, in exchange for large amount of money. The learned trial Court, vide order dated 05.10.2023, has framed the charges against all the seventeen accused, including the petitioner in case titled '*UT of J&K vs. Ajeeda Banoo and others*', arising out of FIR No. 370/2022.

11. The Hon'ble Apex Court, while considering the power of the Court to grant bail under Section 437 of the Code of Criminal Procedure to grant bail in cases involving non-bailable offences has held in '**Gurcharan Singh and others vs. State (Delhi Administration)**', (1978) 1 SCC 118, that in all non-bailable cases except cases relating to offences punishable with death or imprisonment for life, judicial discretion will always be exercised by the Court granting bail subject to imposition of conditions. It was held that overriding considerations in granting bail are the nature and gravity of offence position and status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardizing his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out.

12. In **'Sanjay Chandra vs. CBI', AIR 2012 SC 830**, the Hon'ble Apex Court has held as under:

"...right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required...."

21. 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.

13. It is well settled that law does not authorize or permit any discrimination between a foreign national and Indian national in the matter of granting bail and the same has to be considered on the facts and circumstances of each case. The Court can impose different conditions which may be necessary to ensure that the accused will be available for facing trial but it cannot be said that the accused will not be granted bail because of being a foreign national.

14. The petitioner is overstaying in India as a foreign national, and Section 14A and 14C of the Foreigners Act has been invoked in this regard. It is also submitted that the offence punishable under Section 14A and 14B of the

Foreigners Act carries a punishment of minimum of two years extendable up to maximum of eight years and Section 370 IPC carries punishment of seven years and may also include a fine. The petitioner was arrested on 10.08.2023 and is in custody till date after cancellation of her bail. The investigation in the case has been completed and charge sheet has been presented, and the trial of the case is likely to take some time. It is also settled that once a Court grants bail to someone, it can take it back under certain circumstances but to do so, there must be strong and compelling reasons for the same. Be that as it may, the petitioner only seeks grant of bail as she was allegedly granted the same vide order dated 25.11.2022, which was made absolute on 28.12.2022.

15. Keeping in view the fact that the petitioner is a woman having two minor child and a small daughter, aged one and a half years, who are dependent on her and require her care and attention, and considering that her incarceration has deprived her of the opportunity to provide such care, coupled with the fact that she was already on bail before it was cancelled. The petitioner is residing here for the last so many years and there are no sufficient reasons to have a reasonable apprehension that the petitioner will flee from justice and it is also not expedient, in the interest of justice, to keep the petitioner in custody at this stage in these circumstances. The charge sheet has been presented before the trial court, and co-accused Asmat Ara has already been granted bail by this Court by order dated 11.03.2024 in Bail App No. 156/2023. Therefore, it is expedient in the interest of justice to allow this bail application.

16. In view of the aforesaid facts and circumstances, this petition, along with the connected applications, is allowed and the order impugned is

quashed. The petitioner is enlarged on bail in the aforesaid case upon furnishing a personal bond and two sureties in the amount of ₹2,00,000/- each, one of the sureties shall be the petitioner's husband, i.e., Bashir Ahmad Wani, and another one to the satisfaction of the trial Court. The personal bond to be executed and furnished before Superintendent, Central Jail, Srinagar, whereas two surety bonds are to be executed and furnished before the Court of the Additional Sessions Judge, Budgam, subject to following conditions:

- (a) The petitioner shall appear before the trial Court on all dates of hearing.
- (b) The petitioner shall not leave the jurisdiction of the trial Court without prior permission.
- (c) The petitioner shall not influence the prosecution witnesses.

17. This petition, along with connected applications, is disposed of in the terms aforesaid.

(Sindhu Sharma)
Judge

Jammu:

06.09.2024

Michal Sharma/PS

Whether approved for speaking : *Yes/No*
Whether approved for reporting : *Yes/No*