

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
BARAMULLA**

**SPECIAL JUDGE FOR ULAP CASES FOR DISTRICTS OF
BARAMULLA, BANDIPUORE AND KUPWARA.**

<u>File No.</u> 34/B.A	<u>Dt. Of Institution</u> 09.06.2020	<u>Dt. Of ORDER</u> 01.07.2020
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In the case of;

1. Mudasir Ahmad Khan
2. Mohammad Yaseen Khan
Sons of Abdul Rehman Khan
Residents of Zandpal Tangmarg
District Baramulla.

.....(Accused)

**Through :- Mr. Reyaz Ahmad Lone, Ad-
vocate**

Vs.

U.T. of Jammu & Kashmir
Through Station House Officer,
Police Station Kunzar

Through :- Addl. Public Prosecutor

Present:

**Sanjay Parihar
(J.O Code: JK00033)**

in the matter of;

**FIR No. 37/2020; P/S Tangmarg
U/Ss: 13 ULA(P) Act 392, 511,353,336 109 IPC**

ORDER

1) This application earlier came to be presented by Virtual Mode on 9.06.2020 where after its hard copy was obtained. Same has been diarized. Bail is sought by the petitioners on the ground that they have been falsely implicated and arrested on 24.04.2020; they were working in Srinagar and had gone back home to take care of their ailing parents; while they were sleeping at their residence the armed forces knocked at their door however opening of the door took some time, that made the armed forces furious, who beat up the petitioners as a result petitioner no.1 received head injury; they were taken in custody and falsely implicated; they are poor people earning their bread and butter by working in a hotel in Srinagar; being the only bread earners their detention is causing lot of hardships and harassment to their families; that earlier they moved an application before the Court of JMIC Tangmarg which was withdrawn after the police report disclosing that petitioners have committed offence under ULA(P) Act.

2) As per police report it was on 23rd of April 2020 when complainant Company of 2 Rashtriya Rifles allegedly lodged report with Police Station Kunzar that while they were engaged in search operation, the petitioners obstructed discharge of official duties by the security forces and allegedly attacked them and also tried to snatch rifle. They also raised slogans against country. Upon this case FIR No. 37/2020 under sections 392,511,353,336,109 IPC & 13 ULA (P) Act came to

be registered. I.O proceeded on spot, prepared site plan and also examined eye witnesses. As regards Aishq Ahmad who is brother of the petitioners, his involvement did not surface who was, therefore dropped but as regards two petitioners herein they have committed above said offences who are now in judicial custody.

3) Prosecution resisted the application on the ground that accused have committed heinous offence whereby they have obstructed performance of duties by the security forces who are maintaining law and order and were effecting search in respect of militants who were active in the area. Which process was thwarted by the accused when they attacked the police party and one of the petitioners made an attempt to snatch rifle which the complainant was carrying.

4) That the facts as narrated in the police report are suggestive of intention of accused to commit disturbance and obstruct discharge of duties by security forces. That petitioner did not deserve the concession of bail because they have committed heinous crime.

5) I have gone through the application; objections raised as well as perused the CD file. Section 13 of the ULA (P) Act make punishable an act of taking part in advocating, abetting, advising or enticing commission of an unlawful activity. Besides whosoever assists any unlawful activity of any association declared under section 3 is also deemed to have committed an act under section 13. Term unlawful activity

means any action taken by such individual by words, by actions which is intended to bring out cession of a part of territory of India or which enticed other individual to such an act or which act is intended to disrupt sovereignty and integrity of India besides the act creates disaffection against India.

6) Which offence falls under Chapters III of Act and carries punishment of seven years, however as per section 43(D) bar in enlargement of bail in offences under the Act is applicable only when the offence is one which falls under Chapter IV & VI of the Act, whereas offence allegedly committed by the accused admittedly does not fall within the ambit of section 43(D), therefore there is no legal impediment on their enlargement on bail. Now the question would be under section 43 (D) the limitations in enlargement on bail of accused as provided this section or in addition to one provided in the Code. Meaning thereby that though in the case of present petitioners bar under section 43(D) is not applicable but still the conditions laid in the Code itself are to be satisfied before the petitioners are able to make out a case in their favor for enlargement on bail. Which conditions are generally in the nature that has been laid by the Apex Court from time to time. In Gurchran Singh & Ors. Vs. Delhi Administration AIR 1978 S.C 179 it was held that overriding consideration in granting bail are the nature and gravity of the circumstances in which the offence are committed, the position and status of the accused with reference to the victim and witnesses, the likelihood of the

accused fleeing from justice, of repeating the offence, of jeopardizing his own life being faced by a grim prospect of a possible conviction in the case, of tamper with the 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. In *Mushtaq Ahmad Shah vs. State of J&K Criminal Appeal (D) No. 4/2019* decided on 23.10.2019 the Honble High Court of Jammu and Kashmir considering the case of the petitioner who was involved in section 13 of ULA(P) Act held as under :-

“In Para-19 section 43 D of the ULA(P) Act is not attracted in the instance case because the appellant herein and other persons were alleged to have committed offence under section 13 of ULA(P) Act which falls under Chapter III of Act . Same does not come within the purview of mischief created by the said section. The Honble High Court further went to hold that having considered the matter we are of the considered opinion the order of rejection of bail by Special Judge TADA Srinagar on 17.8.2019 is not in consonance with law. Accordingly the appeal was allowed and appellants were granted bail subject to furnishing of bail bond of two sureties.”

7) In the case in hand the petitioners are alleged to have obstructed duties that were being discharged by security forces to conduct search operation in the area of petitioners

where they were residing. As per prosecution case accused obstructed the security forces from discharging their lawful duty of effecting search and it is further alleged that they also made an attempt to snatch away the rifle of one of the security force officer who was engaged in effecting search operation.

8) Whereas to counter it, it is the case of the petitioners that they were working in Srinagar and because of Covid-19 had gone back to their village, when during night someone knocked at their door and it took them some time to open the door and on opening the door they found armed force waiting outside. They became furious for not opening the door quickly and then beat up the petitioners as a result one of the petitioner sustain head injury because of delay on the part of petitioner in not opening the door, the present case orchestrated against the petitioner. Whereas the accusation leveled against them are of serious nature because security forces were engaged in the process of effecting search so as to rule out presence of any militant or insurgent in the area of petitioners. It is also true that security forces some time work under the hostile atmosphere and the militant organization under the garb of playing a particular cause do influence ordinary citizens to resist the search and security operation initiated by the security agencies in the troubled U.T of J&K. The petitioners are in custody since 23.04.2020 and as per the police report statement of witnesses have been recorded and the only issue now left is to seek prosecution of accused in accordance with the law. No

recovery is sought to be effected from them, police report does not divulge any past history of accused having been involved in obstructing or creating trouble in the ordinary duties of the security forces. Id. Counsel for the petitioner raised apprehension that accused have been falsely implicated because petitioner being the ordinary laborers would never have dared to snatch weapon from an armed men that too of Rashtriya Rifles and there is element of false implication of the petitioner .Though because of the prevailing circumstances and during night hours nobody would like to open the door as that may invite sometimes entrance of militants who under the garb of army and police uniform do enter in the villages for safety and food. In these circumstances petitioners cannot be stated to have violated law by not opening the door of their house in time. The allegations and counter allegations given herein are to be appreciated during the course of trial.

10) Petitioners are presumed to be innocent until proved guilty, their continuous incarceration is not going to serve any purpose as they are stated to be only bread earners of their family, they happen to be the real brothers who were working in a hotel at Srinagar and on the day of occurrence had been to their residence. In that background having regard to the strata of the society in which petitioners used to work, there is probability that they would not have intended to attempt to snatch away weapon of an armed man on the intervening night of 22/23 of April 2020 when the security apparatus had gone

for search operation. Accused have been able to make out a case for their enlargement on bail.They be released from custody on furnishing of bail bond of rupees one lac and personal bond of like amount on the conditions that they shall remain available for investigation and trial, should not indulge in repetition of offence as well as not leave Kashmir Valley without taking prior permission from this court. Since order has been drawn in virtual mode, as such In charge Subsidiary Jail, Baramullah shall set petitioners at liberty after obtaining surety bond from them and forward same to the court in due course. Application is disposed of accordingly.

Announced.
01.07.2020

(Sanjay Parihar)
Principal Sessions Judge,
Additional Charge of ADJ
Baramullah.