

Zafar Iqbal vs State Of J&K on 13 February, 2020

Jammu & Kashmir High Court

Zafar Iqbal vs State Of J&K on 13 February, 2020

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Bail App No. 170/2019

c/w

Bail App No. 192/2019

CrIM Nos. 1430/2019 &
1505/2019

Zafar Iqbal
c/w
Zaheer Abass

.....Applicant (s)

Through :- Mr. B. S. Salathia, Sr. Advocate
with Mr. Rajiv Chargoitra,
Advocate in Bail App No.
170/2019.
Mr. Anil Sethi, Advocate in Bail
App No. 192/2019

V/s

State of J&K

.....Respondent(s)

Through :- Mr. Raman Sharma, AAG

Coram: HON'BLE MR. JUSTICE SANJAY KUMAR GUPTA, JUDGE

JUDGMENT

01. These are the two bail applications filed by the applicants, namely, Zafar Iqbal and Zaheer Abass seeking bail in FIR No. 04/2019 lodged under Section 420, 120-B of RPC, by police station Mendhar, District Poonch.

02. The facts of the two bail applications are identical and are reproduced herein below:-

On 16.05.2019, the complainant namely Sh. Abdul Karim, S/o Sh. Raj Mohd. R/o Pathanateer Mendhar, Poonch and others produced an application at P/S Mendhar duly marked by DIG, R/P Range Hqrs, Rajouri and endorsed by SDPO Mendhar against Tariq Mehmood (Mohd. Tariq), S/o Mohd. Aziz, Imtiaz Ahmed S/o Mohd. Aziz both residents of Village Chhungan and Murtaza Ahmed, S/o Mohd. Bashir, R/o Chak Banola, Tehsil Mendhar and others, alleging therein that the above alleged accused persons were running a private company in the name and style of Hablas Pvt. Ltd. where they have collected money from the people with the motive to double the money within a month's time. The complainants also alleged that the alleged accused doubled the money of various people of the area. The accused were running this fraudulent company from near about 08 months and thereafter have disappeared from Tehsil Mendhar and did not double their money. It was also

alleged that the alleged accused persons cheated the complainants and are wandering in Jammu, Delhi and at various places in India. Upon the receipt of this application/complaint a case FIR No. 70/2019 u/s 420/RPC has been registered in P/s Mendhar on 16.05.2019 and the investigation of the case was taken up by Inspector Sajjad Mir, SHO P/s Mendhar.

Later on, vide PHQ order No. 1929 of 2019 dated 20.05.2019, the investigation of the case FIR No. 70/2019 u/s 420/RPC P/S Mendhar was transferred to Crime Branch, Jammu and entrusted to Dy. SP, Crime Branch, Jammu for carrying out investigation into the matter and a SIT has been constituted. The investigation of the case has been taken up by Crime Branch, Jammu. During the course of investigation, accused kingpin Tariq Mehmood S/o Mohd. Aziz, R/o Chhungan, Tehsil Mendhar, District Poonch was arrested and was interrogated, where under the accused disclosed that he is a Government employee working as Pharmacist in Health Department and was posted as Pharmacist at Health Sub Centre Bathoi Mahore since 2016. In the year 2018, he along with Murtaza Ahmed, S/o Mohd. Bashir, R/o Chak Banola, Mendhar, Imtiaz Ahmed, S/o Mohd. Aziz, R/o Chhungan, Mendhar, Shazia Kousar, W/o Tariq Mehmood, R/o Chhungan, Mendhar and others planned to launch a company under the name and style Hablas Online Shopping at Mendhar, Poonch. The accused vide No. ROC/J&K/Record/217 dated 27.06.2019 obtained NOC from Registrar of Companies to carry on the business of all kinds of goods, commodities and services as buyers, sellers, traders, wholesalers, distributors, importers, agents, brokers, stockiest, commission agents, dealers and consultants of all kinds of products and services ; accordingly he along with Imtiaz Ahmed, Murtaza Ahmed, Shazia Kousar and others got registered his company under the name and style Hablas-e-Commerce Pvt. Ltd. on 14.08.2018 through Chartered Accountant namely Pankil Malhotra having its office at New Delhi Lodhi Road (542890) under the corporate identity number of the company as U74999JK2018PTC010573, PAN No. as AAECH6222N, TAN No. as AMRH1222001. But the investigation reveals that the accused in connivance with others started collecting money in the month of March, 2018 with the promise to sell them different products on 50% commissions through agent system and opened an account No. 0842010100000089 in the name of Hablas Online Shopping under the proprietorship of accused Shazia Kousar, W/o Tariq Mehmood at J&K Bank Sakhi Maidan, Mendhar and asked the people to deposit their amount in the said account.

The accused also used account No. 32283357074 and CC-77 for purchase of products which are maintained in the name of one of the co-agent namely Mohd. Shafiq and made payments to some of the companies from whom the gift items and other products were purchased. In this process of purchasing and selling the products the accused collected different amounts from different individuals in advance. Some of the individuals were given the products along with gifts, while as, most of the individuals were neither provided any gifts nor any products against their advance deposits and their money was grabbed under the promise of getting the products which the accused was providing and include Blankets, Quilts, Press, Lunch Boxes, Body Messaging machines etc. The accused further disclosed that after sometime, he stopped providing products and he in connivance with other accused and employees of the company started collecting cash deposits with the promise of providing them high rate of interests of 50% and to win over the confidence of the people he provided high interest to some people who spread the rumors in the area to lure the people and in this way, people started depositing the cash amounts with his company which was formed by him in

connivance with other accused. Further, the accused also disclosed that he has purchased some properties in Mendhar, Gurgaon and the record/register which contains details of deposits collected by him and other accused employees of the company is lying in his house located at Behara Mendhar which has been occupied by some people.

It is stated by the learned counsel for the applicant in Bail App No. 170/2019 that name of Zafar Iqbal never figured in the FIR and that it was only after the investigation that the applicant has been falsely implicated by the respondent without any cogent proof.

Grounds of challenge in Bail Application No. 170/2019

03. The main grounds in the instant application are that:-

- a. No criminal offence is made out from the bare perusal of the Preliminary Charge Sheet against the applicant, but still the applicant has been put behind the bars by the respondent on the basis of a false and frivolous complaint, in which nothing has been said against the applicant. The applicant moved an application for grant of bail before the Court of Judicial Magistrate 1st Class Mendhar which came to be dismissed without considering the merits of the application vide order dated 23.09.2019. The name of applicant does not figure in FIR.
- b. The applicant is entitled to benefit of presumption of innocence as he is not guilty of the commission of any non-bailable offence, on account of the fact that neither the FIR makes mention about his name for commission of any offence nor the charge sheet filed by the respondent Crime Branch lays foundation even prima facie to connect the applicant with the commission of alleged offence, therefore, the applicant being an innocent person is entitled to be released on bail.
- c. A false and frivolous case has been cooked up by the respondent purely in active connivance with the complainants to implicate the innocent applicant despite the fact that neither he has committed any crime nor he has any knowledge about the commission of the same.
- d. The respondent without conducting any proper enquiry and without ascertaining the facts registered an FIR and presented Preliminary Charge Sheet against the applicant which is totally against the factual position and amounts to abuse of process of law.
- e. The applicant is a respectable law abiding citizen and an advocate by profession and presentation of Preliminary Charge Sheet against him at the behest of complainants is nothing but a ploy in the hands of the respondent to injure and malign his reputation in the society.
- f. The respondent without appreciating the facts and circumstances of the case and without looking into the veracity of allegations presented the Preliminary Charge Sheet, despite the fact that the alleged offences do not connect involvement of the applicant at all.

g. The criminal proceedings initiated against the applicant is manifestly saturated with malafide and maliciously instituted with an ulterior motive for wrecking vengeance on the applicant.

Objections filed in Bail Application No. 170/2019

04. The State has filed the objections in Bail App No. 170/2019, wherein it is stated that :-

a. During the course of investigation, accused Zaffar Iqbal S/o Nizam Din R/o Salwah Tehsil Mendhar District Poonch at present Gujjar Colony, Upper Paloura, Jammu who has been found actively involved in the case has also been arrested on 10.06.2019 and is on judicial remand.

b. From the investigation it is found that accused Zaffar Iqbal S/o Nizam Din R/o Mendhar at present Upper Palora, Jammu has propagated for the accused and has intentionally delivered various public lectures to lure the innocent people.

c. The accused by way of propagation and by delivering lectures in public has won over the confidence of the people who were assured that the company is authorized and there was nothing illegal going on. Therefore, on this assurance and faith people deposited their hard earned money with the said fake company for which the accused has propagated in association with other accused.

d. The accused Zaffar Iqbal has received huge amounts out of public money illegally collected and an amount of Rs. 10 lacs has been recovered so far which the accused had invested for purchase of plot at Roop Nagar with a property dealer namely Ramesh Kumar Raina, whose statement u/s 161/Cr.PC is also recorded.

e. The accused is seen in a video seized in the case distributing/ delivering huge amounts to some individuals out of public money whose identity is yet to be established.

f. Accused Zaffar Iqbal is also seen in videos delivering Lectures projecting the accused as noble person which has gone viral in social media and has been seized in the case and sent to CFSL.

g. The accused Zaffar Iqbal in one of the video, which is also viral in social media is seen with huge amounts in his possession and is seen delivering the same to some unknown persons, which further indicates that the accused has remained fully associated with other accused and with illegal business of doubling the amounts by means of cheating and fraud and has received huge amounts out of the public money illegally collected by the accused by means of cheating and fraud. This further indicates that the accused was actively involved in swindling the Public money as well as defending / harbouring the accused to grab the public money.

h. During investigation the bank account details of accused Zaffar Iqbal have also been obtained from the different Banks and seized in the case. Perusal of Bank account statements of the accused Zaffar Iqbal reveals that A/c No. 0406040100003544 maintained at J&K Bank, High Court Jammu

and A/c No. 0094040100029576 maintained at J&K Bank Mendhar in the name of accused Zaffar Iqbal have been found credited by an amount of Rs.43,53,376/- and Rs.14,52,932/- respectively w.e.f 01.01.2018 to 23.06.2019. Besides, A/c No. 0094040100039469 maintained in the name of Faheen Kousar W/o Zaffar Iqbal has also been found credited by an amount of Rs.3,04,325/- during the above said period. Presently there is Rs.2553/- balance in A/c No. 0406040100003544, Rs.1580/- balance in A/c No. 0094040100029576 and Rs. 8971/- balance in A/c No. 0094040100039469, which indicates that the public money collected and received have further been drawn and transferred and the trail of the same is in progress. The accused has failed to give the details of the said amount received by him in the above A/c Nos. maintained in his name. No detail was provided by the accused to justify the source of money indicating there by that the money received by the accused is public money collected by means of cheating and fraud. The investigation conducted so far reveals that more than 8969 people have been duped and an amount of Rs.1187962950/as per record has been swindled.

Grounds of challenge in Bail Application No. 192/2019

05. The main grounds in the instant application are that:-

- a. The applicant was engaged by one Tariq Mehmood R/o Mendhar to work in his office as Accounts Assistant. While the office management, work and public dealings were dealt with by the employer of the applicant, the applicant continued to serve in the office as Accounts Assistant and used to get the monthly salary. The applicant submits that he was never associated with the business activities of the employers, nor did he ever contact any customer outside the office or allured/ entice any of the persons residing in the locality elsewhere.
- b. He never received any money directly from any complainant nor has he ever dealt with any depositor on personal level. Whatever job was assigned to the applicant was done by him as Accounts Assistant along with other 24 employees engaged in the company/ office.
- c. The applicant submits that he has not committed any crime and was working as Accounts Assistant in the company only and had not committed overt or covert act in commission of the crime or in alluring anyone regarding deposit etc. d. The applicant has been wrongly involved in the case and has been arrested since 11.06.2019. Even if it be assumed that some crime has been committed, the applicant submits that his name does not figure in the application which was presented for registration of the FIR. The applicant submits that his name has not even been disclosed in the complainant statement under Section 161 Cr. PC.
- e. The preliminary charge sheet was presented before the Court without any documentary proof as regards commission of the offence by the applicant. Applicant has acquired right of bail under the provisions of 167 Cr. PC, which cannot be denied to him on any account, whatsoever when the fact that the investigation was

incomplete on the date of filing the bail application is by itself sufficient to accord bail to the petitioner.

f. The other provisions as regards arrest memo have also not been followed by the respondent. The documents have not been sent to the concerned Magistrate in time. The investigation in the matter is a lock-sided investigation and the Learned Magistrate below has not considered this aspect of the matter and appears to have been influenced/swayed by the allegations and the figures quoted before him by the respondent although the figures quoted have no reference or regard to evidence collected.

Objections filed in Bail Application No. 192/2019

o6. In Bail App No. 192/2019 the State has stated that:-

a. From the investigation it is found that accused Zaheer Abass S/o Tasweer Hussain R/o Chhungan, Mendhar has worked as Accounts Assistant with the said company and was responsible for collecting of illegal amounts from various innocent people by making false promises. Besides this, he has also shared the public money illegally collected under the pretext of doubling the same.

b. During the course of investigation, accused Zaheer Abass S/o Tasweer Hussain R/o Chhungan, Mendhar who has been found actively involved in the case has also been arrested on 12.06.2019 and is in judicial custody lodged at District Jail Rajouri.

c. The accused disclosed that he remained associated with Tariq Mehmood and was working as Accountant in Hablas-e- Commerce Pvt. Ltd. where huge amounts were being deposited by the innocent people and the said accused has also taken Rs. 5 lacs from the said company illegally and spent by him for his personal use, which is to be recovered.

d. During the investigation it is also found that an amount of Rs.11 lacs was credited in the account of accused Zaheer Abass out of the public money and the same was further transferred to some other account, Besides, Rs. 5 lacs, which he took from the company was deposited by him in the HDFC Bank Mendhar and is to be recovered from the accused.

e. That various people have stated in their statements recorded u/s 161/Cr.PC that Zaheer Abass in connivance with Tariq Mehmood and others have fraudulently taken money from them under false promises and have swindled the same. It has also been found that during the period in question the accused has constructed a double storey house at Chhungan Mendhar out of the public money, further verification of the same is in progress. Besides, another house is yet at Plinth level at Chhungan, which requires further verification so as to ascertain the source of money used for construction of these houses. f. That during the course of further investigation account statements of accused Zaheer Abass have been obtained and seized in the case. Perusal of account statements reveals that an amount of Rs. 18,77,379/- has been found credited in A/c No. 0094040100031012 maintained at J&K Bank Mendhar w.e.f. 13.06.2018 to 06.05.2019 and an amount of Rs. 3,41,600/-

has been found credited in A/c No. 32447188952 w.e.f. 10.07.2018 to 29.05.2019 maintained in the name of accused Zaheer Abass at SBI, Mendhar. Whileas, the detail of remaining accounts is still awaited from the concerned Bank branches. Besides, the particulars of debit and credit are awaited to ascertain as to where from the above amount has been credited and to whom the same has been further debited. The amounts received by the accused out of the public money collected by means of cheating and fraud is also yet to be recovered from him and other accused persons.

g. That similarly, the Bank account statements of Tasveer Hussain father of accused Zaheer Abass as well as Bank statements of his sister namely Tabassum Firdous and mother namely Akhter Bi have also been obtained and seized in the case, perusal of which reveals that A/c No. 0842040100000372 maintained in the name of Tasveer Hussain has been credited by an amount of Rs. 5,60,034/- w.e.f. January 2018 to 10.06.2018. Similarly, A/c No. 084202045000015 maintained in the name of Tasveer Hussain has been credited by an amount of Rs. 1,24,000/-. A/c No. 0094040100021225 maintained in the name of Tasveer Hussain has been found credited by an amount of Rs. 16,46,082/-. A/c No. 0094040100017726 maintained in the name of Akhter Bi W/o Tasveer Hussain has been credited by an amount of Rs. 70,190/- and A/c No. 0094041000002274 maintained in the name of Tabassum Firdous D/o Tasveer Hussain has been credited by an amount of Rs. 2,53,545/w.e.f. January 2018 to June 2019. These accounts have been frozen so as to ascertain the source of money.

h. That during the course of investigation it is also found that accused Zaheer Abass, Tasveer Hussain father of accused Zaheer Abass have deposited huge amounts in the Hablas-e- Commerce company in their names as well as in the names of their relatives and have also received lakhs of rupees as profit from the said company.

i. That as per records, Rs. 36,60,000/- has been deposited in the name of accused Zaheer Abass S/o Tasveer Hussain, Rs. 1,40,000/in the name of Akhtar Bi W/o Tasveer Hussain, Rs. 1,70,000/in the name of Tabassum D/o Tasveer Hussain, Rs. 2,00,000/in the name of Tasveer Hussain and Rs. 2,60,000/in the name of Tahir Abass S/o Tasveer Hussain. The amounts taken as profit are also yet to be recovered.

j. That during the course of investigation vehicle (Scorpio S-11) bearing registration No. JKO2CF-7112 has been seized from the possession of accused Zaheer Abass on 10.06.2019 vide seizure memo dated 10.06.2019. Loan file of the vehicle in question has also been obtained from Mahindra and Mahindra Financial Services Ltd. and the perusal of which reveals that Borrower Tasveer Hussain and co- borrower accused Zaheer Abass had purchased the above mentioned vehicle from Shuhul Auto Mobiles Pvt. Ltd. Jammu on 25.12.2018 for an amount of Rs. 15,11,136/- after obtaining a loan of Rs. 11,00,000/- from Mahindra and Mahindra Financial Services Ltd. and have deposited an amount of Rs. 4,11,136/as down payment of the said vehicle. The above vehicle has also been purchased by the accused during the period in question and the down payment so made is out of public money collected by the accused from innocent people, while as, the loan so acquired is just to colour the fraud committed by the accused and to conceal the public money illegally collected in connivance with other accused. k. That the family income of the accused is so meager and is also questionable. The monthly installment of the vehicle is Rs. 26,750/-, which is

beyond the competence of the accused who has failed to give the details of his legal sources of income so far as the investments made by him are concerned which as per the investigation have been made during the period in question.

l. That the investigation conducted so far reveals that more than 11,211 people have been duped and an amount of Rs. 147, 67, 92,256/- as per record has been swindled.

m. The Court of JMIC Mendhar has rejected the bail application of accused Zaheer Abass, S/o Tasweer Hussain, R/o Chhungan, Tehsil Mendhar, District Poonch.

o7. I have heard the arguments of learned counsel for the applicants/petitioners in both the bail applications as well as the State counsel at length.

o8. From bare perusal of the facts of the case, it is evident that the applicants along with other co-accused have swindled an amount of Rs. 147, 67, 92,256/- by floating a private company in the name and style of Hablas Pvt. Ltd. They collected the money from the people of that area and undertook to double the same within one month. It is humanly impossible to double the money within one month by any sort of business. In this way, applicants along with other accused have criminally instigated the people to deposit the money by false promise of doubling the same within one month..

o9. During the course of arguments, learned counsel for the applicant in Bail App No. 170/2019 has stated that the applicant is an Advocate and against him only allegations are, that he asked the people at large to deposit the money in the company and his name does not stand in FIR. Learned counsel for the applicant has also submitted the photocopies of various Bank pass-

books of the applicant's account and has tried to satisfy the Court that money has been transferred to his account by his relatives. Various affidavits in this regard have also been filed.

10. Similarly, learned counsel for the applicant in Bail App No. 192/2019 has stated that the applicant was only Accountant in the company and there are no allegations incriminating against him. Learned counsel for the applicant has also furnished photocopies of pass-books, satisfying the Court that he has received the money by lawful means from his relatives. Certified affidavits of the persons duly attested by the notary have also been filed by the applicants in that regard.

11. Learned counsel for the applicants has placed reliance upon case titled "P. Chidambaram Vs Directorate of Enforcement" bearing Criminal Appeal No. 1831/2019, wherein the Apex Court has granted bail to P.

Chidambaram under Section 3 of Prevention of Money Laundering Act, 2002.

12. Reliance is also placed upon case titled "Surendra Nath Pandey and another Vs State of Bihar and another," reported in 2016(1) BBCJ 275, wherein the Supreme Court has held that the affidavit given by the petitioner thereby furnished false Search Report/ NEC/legal opinion with regard to the

properties/ land documents in order to cheat the Bank and to facilitate obtaining of loan by the concerned persons, the allegations in this case are bald and omnibus and do not make any reference to the role of the appellants, therefore, SC granted bail. Further reliance has been placed on 2018 AIR SC 980, case titled Dataram v state of UP, wherein it is held that putting accused in jail is exception ; 2011AIR SCW 6838 case titled Sanjay Chandra v. CBI, wherein it is held that where investigation is complete, charge sheet filed, bail should be granted.

13. Learned counsels for the applicants have also argued that respondent in its objection has stated that only preliminary charge-sheet has been filed and supplementary charge-sheet is yet to be filed. Therefore, as per argument, by filing the preliminary charge-sheet, the respondents have violated the provisions of Section 167 of Cr. PC, because before expiry of statutory period provided under Section 167 of Cr. PC for presenting final challan, they have filed incomplete charge-sheet, which is not maintainable, therefore, the applicants are required to be enlarged on bail. Reliance has been placed on CBI v. Anupum J Kulkarni, reported in SCR 1992 (3) 158.

14. I have also considered these aspects of the matter. Law is clear that detail of appreciation of documents, which were never filed before the Trial Court (Bail court) cannot be considered by the High Court for the first time in the bail application. Further, this Court, while dealing with the bail application, cannot appreciate the evidence oral or documentary in detail, which the Court is required to appreciate while framing of charge or discharge of accused.

15. In case titled "Y. S. Jagan Mohan Reddy Vs Central Bureau of Investigation" reported in AIR 2013 SC 1933, wherein the Supreme Court has held that bail in economic offences requires different approach by the Court.

Paragraph Nos. 13, 15 & 16 of the aforementioned judgment is reproduced hereunder for facility of reference:-

"13) Learned senior counsel appearing for the appellant pointed out that after the order dated 05.10.2012, the CBI is not justified in prolonging the same just to continue the custody of the appellant. It was also highlighted that even according to the CBI, several Ministers and IAS officers are involved, but no one has been arrested so far. As far as those allegations are concerned, it is the claim of the CBI that considering the huge magnitude of transactions, various beneficiaries, and companies/persons involved with A-1 and his associates, the CBI is taking effective steps for early completion of the same. Though learned senior counsel for the appellant submitted that in view of non-compliance of Section 167 of the Code the appellant is entitled to statutory bail, in view of enormous materials placed in respect of distinct entities, various transactions etc. and in the light of the permission granted by this Court in the order dated 05.10.2012, we are unable to accept the argument of learned senior counsel for the appellant.

14)

15) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

16) While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

16. Further in view of submission made by the learned counsel, let me address the contention regarding the entitlement of the petitioners to get default bail in view of preliminary charge sheet as stated by counsel. Clause (a) (i) (ii) of the proviso to Section 167 (2) Cr.P.C provides, that if the investigating agency fails to complete the investigation within the statutory period of 60 days or 90 days, as the case may be, from the date of first remand, the accused becomes entitled to bail by right of default. Section 173(1) of the Cr.P.C.

provides that every investigation under Chapter XII shall be completed without unnecessary delay. Sub-section (2) of Section 173 Cr.P.C. provides that as soon as the investigation is completed, the officer-in-charge of a police station shall forward to the magistrate empowered to take cognizance of the offence on the police report. Section 173 (2) also provides the particulars, which a police report has to contain. Therefore, from a combined reading of Section 167 (2) and 173 (i) & (ii), it is apparent that if the police failed to submit a final report in terms of Section 173(2) of the Cr.P.C within the statutory period of 90 days or 60 days as the case may be, the accused becomes entitled to bail as a matter of right. The contention of the learned State counsel was that in the present case, the charge-sheet submitted against the petitioners was not a preliminary charge-sheet and that whether said charge-sheet is a final report in terms of Section 173 (2) of the Cr.P.C has to be considered on the basis of the overall materials collected and produced before the court along with the report and not on the basis of an isolated statement or averment made in the charge-sheet.

17. The Apex Court in Abdul Azeez P.V. and Ors. Vs National Investigating Agency (NIA) reported in 2014 (16) SCC 543, wherein the factual matrix of the case was that after completion of the investigation, charge-sheet was filed by NIA on 19-10-2013, which inter alia stated the allegations against each of the petitioners and the materials on the basis of which such allegations were levelled. It also stated in paragraphs 18.2 and 18.3 that requisite sanction under Sections 18 and 18A of the UAPA was accorded by the Ministry of Home Affairs, Government of India, vide order dated 17.10.2013 and also that sanction under Section 7 of the Explosive Substances Act was accorded by the District Magistrate, Kannur vide his order dated 15.10.2013. In paragraph 18.6 of the charge-sheet it was stated to the following effect:

"Foreign bank transaction details are to be collected and the call Data Records have to be further analyzed. Records pertaining to Thanal Foundation Trust need to be collected and verified. Hence, further investigation is inevitable and is in progress. Additional list of witnesses, additional statements of witnesses and additional list of documents will be filed in due course. Hence it is also prayed that further investigation u/s 173(8) Cr.P.C. may kindly be permitted."

In view of above averment in the charge-sheet, a plea was raised before the trial court, that the charge-sheet filed on 19-10-2013 was not a final report as contemplated u/s 173 (2) of the Cr.P.C., and as such, accused was entitled to default bail. The plea was rejected by both the learned trial court as well as the Hon'ble High Court and eventually an appeal was preferred before the Apex Court. The Apex Court dismissing the appeal, upheld the view taken by the High Court and the trial court, and observed in paragraph 4 of the judgment as under:-

"4. Having gone through the charge-sheet, we are not persuaded to take a different view. The materials adverted to show that it was a final report on the facets investigated into by the investigating agency.

Furthermore, the requisite sanctions as required under Sections 18 and 18A of the UAPA and so also under Section 7 of the Explosive Substances Act were also accorded by the concerned authorities. The charge-sheet so filed before the learned Special Court was complete in all respects so as to enable the learned Special Court to take cognizance in the matter. Merely because certain facets of the matter called for further investigation it does not deem such report anything other than a final report. In our opinion Section 167(2) of Cr.P.C. stood fully complied with and as such the petitioners are not entitled to statutory bail under Section 167(2) of Cr.P.C."

18. Learned State counsel would further submit, that the final report submitted u/s 173 (2) CrPC is an intimation to the Magistrate that sufficient evidence as to the commission of offence has been collected to enable the Magistrate to take cognizance and to proceed with the enquiry and trial of the case. If the charge-sheet contains all necessary facts to enable the Magistrate to take cognizance, such final report or charge-sheet cannot be discarded only because some facts of the matter require further investigation. State counsel has also placed reliance on paragraph 76 of the Constitution Bench Judgment of the Apex Court in K. Veeraswami Vs Union of India and Ors., reported in (1991) 3 SCC 655, which reads as under :-

"76. The charge sheet is nothing but a final report of police officer under Section 173(2) of the Cr. P.C. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Sec.170. As observed by this Court in *Satya Narain Musadi and Ors. v. State of Bihar*, [1980] 3 SCC 152 at 157; that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the investigating officer has been able to procure sufficient evidence for the Court to inquire into the offence and the necessary information is being sent to the Court. In fact, the report under Section 173(2) purports to be an opinion of the investigating officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the Court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report 'of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case "adducing acceptable evidence."

19. In the present case, apparently on the basis of FIR lodged by the informant, police completed the investigation and initially submitted the charge sheet against the petitioners and others, and having considered the broad spectrum of the conspiracy involved in the case, police has continued with further investigation.

20. In view of the ratio of the aforementioned judgment, the argument of the learned counsel for the applicants that preliminary charge-sheet has been produced, which is incomplete, is not sustainable. Another plea taken that name of accused do not stand in FIR, is also not sustainable, because FIR is not substantial piece of evidence and it only sets criminal law in motion, the involvement of any other accused whose name does not figure in FIR, can also be inferred, if during investigation evidence comes against him. While granting or refusing bail, the Court has to see the nature of accusation, gravity of the offence for which the accused have been found involved and impact of granting bail on general public. The argument that investigation is complete and nothing is required from applicants, is also not sustainable, because it may be a ground for consideration of bail but not an exclusive ground to grant bail.

The applicants along with other accused have been found involved in swindling of huge amount of Rs.147,67,92,256/- of innocent persons of locality on the promise of doubling the same within one month. Applicants and other accused have used the money of public for their own use by purchasing properties at Jammu and outside Jammu. In case bail is granted, the trust of the general public, especially the persons who have deposited the money with the company, will be shaken and they will lose faith on Courts. The laws cited by counsel for petitioners are not applicable in the present set of circumstances of both the cases.

21. Supreme Court of India in Criminal Appeal No. 1711 of 2019 (@ Special Leave Petition (Criminal) No. 120/2019) Central Bureau of Investigation Vs Versus Ramendu Chattopadhyay read with Criminal Appeal No. 1712/2019, Republic of India (C.B.I.) vs Ashis Chatterjee dated 19.11.2019 held as under:-

"5. Having regard to the material on record and since large amounts of money belonging to innocent investors have been siphoned off, as well as for the aforesaid reasons, the High Court, in our considered opinion, should not have released the Respondent on bail.

6. Consequently, the impugned order granting interim bail to the Respondent stands set aside. His bail bonds are cancelled.

7. The appeal is allowed accordingly."

22. In view of what has been stated above, and the law cited by the learned counsel for the parties, these applications are found to be without any merit and are, accordingly, dismissed along with connected CrlMs.

(Sanjay Kumar Gupta
Judge

Jammu
13.02.2020Muneesh

Whether the order is speaking :
Whether the order is reportable :

NARINDER KUMAR SHARMA
2020.02.13 15:05
I attest to the accuracy and
integrity of this document