

GAHC020004242022



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : CRAPL/4/2022

NATIONAL INVESTIGATION AGENCY(NIA)
MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, IMPHAL, MANIPUR

VERSUS

RAYILUNG NSARANGBE(A-1)
S/O DEUHING NSARANGBE,
R/O BENREU(POST OFFICE PEREN, NAGALAND), PRESENT ADDRESS -
TOULAZAUMA NEAR GOVERNMENT PRIMARY SCHOOL, DIPHUPAR,
DIMAPUR, NAGALAND

BEFORE:

**HON'BLE MR. JUSTICE KAKHETO SEMA
HON'BLE MR. JUSTICE BUDI HABUNG**

For the appellant	: Mr. D.Bharadwaj
For the respondent	: Mr. A. Zhimomi
Date of hearing	:15.05.2024.
Date of Judgment	: 07.06.2024

:: JUDGMENT AND ORDER ::
[CAV]

Budi Habung, J

1. Heard Mr. D. Bharadwaj, learned PP, NIA for the appellant. We have also heard Mr. A. Zhimomi, learned counsel for the respondent/accused.

2. This is an appeal under section 21 (4) of the NIA Act, 2008 which has been preferred by the National Investigation Agency (NIA), Imphal, Manipur assailing the bail order dated 13.06.2022 passed by the learned Special Judge NIA court, Dimapur, Nagaland in I.A.(Bail) No.39 of 2022 arising out of NIA case No.RC-02/2020/NIA-GUW by which the learned Special Judge, NIA court has enlarged the respondent accused Rayilung Nsarangbe (A-1) on bail who was arrested on 05.07.2020 in connection with RC-02/2020/NIA-GUW.

3. The brief fact of the appellant's case leading to the filing of this present appeal is that on 04.07.2020 an input was received regarding financial transactions being diverted from Government Funds and projects (PMGSY, NREGA etc.) and other construction works going on in the states of Manipur and Nagaland by sympathizers and over ground workers of NSCN-IM under the directions of SS Col Rayilung Nsarangbe of NSCN-IM. Based on the information, a joint operation was launched by Assam Rifles with the local police and seized Rs 11,00,000/- from one vehicle bearing Registration No NL-02L-5334. The seized amount was collected by accused persons Zingshongam Muinao and Zingring Mung from one Rabi Pame on the directions of SS

Col Rayilung Nsarangbe of NSCN-IM. In the follow up operation, Rabi Pame was arrested from his residence and one Vimal Kumar Jain was arrested from general area near GS road, Dimapur and Rs. 15,00,000/- was recovered from his possession. The residential premises of accused SS Col Rayilung Nsarangbe of NSCN-IM was searched and Rs 1,32,72,800/- along with arms, ammunitions, explosives, extortion slips of NSCN-IM, several incriminating documents and a fake passport in the name of Pele Zeme were recovered. The total cash recovered in the entire operation amounted to Rs. 1,58,72,800/-.

4. Accordingly, an FIR No. 0074/2020 dated 05.07.2020, PS Diphupar, Dimapur Nagaland was registered under sections 120B, 384,406,465,471,506, 34 IPC and section 4 of PMLA Act, sections 25(1A), (1B) (a) of Arms Act, section 5(b) of Explosive Substance Act, sections 13, 17, 18 and 21 of the Unlawful Activities (Prevention) Act 1967, sections 7 and 8 of NSR Act, section 12 (1) (b) of Indian Passport Act and section 6(1A) of Indian Wireless Telegraphy Act of Diphupar Police Station, Dimapur, Nagaland relating to recover of total of Rs 1,58,72,800/- along with arms ammunitions, explosives and extortion slips of Nationalist Socialist Council of Nagaland-Isak and Muivah faction (Hereinafter referred to as NSCN-IM) and initial arrest of 6 (six) accused persons.

5. That, in compliance of MHA Order No. 11011/47/2020/NIA dated 08.07.2020 by the National Investigation Agency, (hereinafter referred to as NIA) Branch Office, Guwahati the case was re-registered as RC-02/2020/NIA-GUW dated 09.07.2020 u/s 120B, 384, 406,

465, 471, 506, 34 IPC and sec. 4 of PMLA Act, sec. 25(1A), (1B) (a) of Arms Act, sec, 5(b) of Explosive Substance Act, sections 13, 17, 18 and 21 of the Unlawful Activities (Prevention) Act 1967, sections 7 and 8 of NSR Act, section 12 (1) (b) of Indian Passport Act and section 6 (1A) of Indian Wireless Telegraphy Act, 1933 against accused person namely SS Colonel **Rayilung Nsarangbe (A-1)**, SS Private. LamciIralu (A-2), Zingring Mung (A-3), Zingshongam Muinao (A-4), Dr. Rabi Pame (A-5), Vimal Kumar Jain (A-6) and during the course of investigation, two more accused persons namely, Ruth Chawang @ Ruth Zeliang @ Rago Chawang (A-7) and Ramningle Pame @ Ramning (A-8) were arrested on 11.07.2020 and 29.10.2020 respectively.

6. During the investigation it was revealed that respondent/accused Rayilung Nsarangbe (A-1) along with other associates conspired and actively involved in raising funds for the terrorist gang to continue their terrorist activities by diverting Government Funds, carrying out extortion in a well-organized manner from the companies involved in road construction in the states of Manipur and Nagaland, collecting illegal taxes from the transporters in an organized way by issuing slips and maintaining various seals and acquiring properties for NSCN-IM. Further the respondent/accused person also illegally possessed arms, ammunition, explosives for carrying out illegal activities and extortion in the state of Nagaland to strike terror among the people of India.

7. That after completion of investigation and on discovery of prima facie material against the respondent/accused persons, the CIO of the case filed

charge-sheet against five accused persons including the present respondent/accused Rayilung Nsarangbe @ Nsarangbe (A-1) before the Special Judge, NIA, Dimapur. Thereafter, charges were framed against the respondent/accused Rayilung Nsarangbe (A-1) for offence under sections 120B, 384,406,465,471,506, 34 IPC and section 4 of PMLA Act, sections 25(1A), (1B) (a) of Arms Act, section 5(b) of Explosive Substance Act, sections 13, 17, 18 and 21 of the Unlawful Activities (Prevention) Act 1967, sections 7 and 8 of NSR Act, section 12 (1) (b) of Indian Passport Act and section 6(1A) of Indian Wireless Telegraphy Act.

8. It is stated that the offences under section 17 and 18 of the UP(A) Act, 1967 are non bailable in nature and punishable with imprisonment which cannot be less than 5 years which may extend to imprisonment for life and shall also be liable for fine. The section 17 and 18 are covered under Chapter IV of UA(P) Act, 1967 which creates bar for granting the bail if accusation against the accused person is prima facie true. However, by an order dated 13.06.2022, the learned Special Judge, NIA, Dimapur has enlarged the respondent/accused on bail amongst other on the ground of delay in the trial of the case.

9. Being highly aggrieved by the bail order dated 13.06.2022, the appellant NIA has filed the present appeal impugning the bail order dated 13.06.2022 on the following grounds amongst others:

a) That the findings recorded by the learned trial Court for granting bail is against the principle laid down not only in the statutory provision but also against the principles

laid down by the Hon'ble Supreme Court of India in its various judgments and thereby caused miscarriage of justice;

b) That the learned trial court while passing the bail order dated 13.06.2022 failed to consider the material collected by the NIA which reveals a prima facie case against the accused for commission of the alleged offence;

(c) That the learned trial court failed to appreciate the recovery made from the possession of the respondent/accused, his unlawful association with the NSCN-IM which is a terrorist gang, his participation in anti national activities with other co-accused persons belonging to the terrorist gang, NSCN-IM, his association with the top leaders, self-styled colonel of NSCN-IM, a terrorist gang and involved in extortion and other illegal activities along with other co-accused; and, on the basis of the above findings, a charge sheet was filed against the accused/respondent and subsequently the charges were framed against the respondent/accused, as a prima facie case, was found well established against the respondent/accused.

(d) That the learned trial court has however granted bail to the respondent/accused solely basing on the submission of the respondent/accused that there is a delay in the trial of the case. The learned counsel for the appellant has however submitted that as on date only two prosecution witnesses have been examined, however the delay in examining the prosecution witnesses was on account of the pandemic and not due to the fault or lapses on the part of the prosecution. Therefore, the trial court releasing the respondent/accused on bail citing the delay in the case is not

only bad in law but unreasonable.

(e) Mr. D. Bharadwaj, learned PP, NIA for the appellant further submits that the learned trial court has allowed the bail application of the respondent/accused on the ground that there was a delay in trial proceeding of the case. He further submits that the ground assigned by the learned trial court for grant of bail to the respondent/ accused of such a serious offence is not a sufficient ground to enlarged the accused on bail and that the learned Trial Court has failed to consider the mandate of section 43D (5)& (6) of the UA(P) Act, 1967 and also failed to consider the ratio laid down in the case of; (i) *The National Investigation Agency Vs. Zahoor Ahmed Shah Watali* (MANU/SC/0458/2019); (ii) *Jayant Kumar Ghosh Vs. State of Assam* (Manu/GH/0540/2010); (iii) *National Investigation Agency Vs Victo Swu*, (Manu/GH/0796/2017); *Gurwinder Singh Vs. State of Punjab and Anr in Criminal Appeal No. 704 of 2024*.

(f) Mr. D. Bharadwaj, learned PP further submits that enlarging the respondent/accused on bail in such a serious case poses threat to the national security and therefore, prays for cancellation of the bail granted to the respondent/ accused.

10. Per contra, Mr. A. Zhimomi, learned counsel for the respondent/accused defended the bail order dated 13.06.2022 passed by the learned Special Judge, NIA, and by referring to the written objection filed by the respondent/accused has made the following submissions;

(a) That the learned trial court granted bail to the accused, under strict terms and conditions, only after

considering the overall facts and the circumstances of the case.

(b) That the appellant has failed to establish that the respondent/accused had violated any of the terms and conditions of the bail nor has been able to establish that the respondent/accused has misused the liberty of bail granted by the trial court.

(c) That although the charge sheet in the case was submitted against the respondent/accused way back on 29.12.2020, the charges were framed against the respondent/accused only on 06.05.2022 after a gap of 493 days and consequent to the framing of the charges, the prosecution could examine the first witness (PW-5) only on 17.06.2022 i.e. after a gap of about 2 years from the date of taking into custody of the respondent/accused.

(d) That although there are as many as 105 prosecution witnesses, the prosecution, till date, has examined only two prosecution witnesses and going by this trend, it is unlikely that the trial could be concluded soon.

(e) The allegation of prima facie case must also be matched with promptitude in the prosecution to establish the guilt of the respondent/accused No. 4 and the gravity of the allegation under UA(P) Act, 1967 must be balanced against the rights of the respondent/accused No. 4 in the context of the delay in prosecution and/or non-prosecution. Furthermore, the period already spent in custody and the length of time the trial was likely to take, on account of the delay of the appellant in prosecuting the case/producing the prosecution witnesses were factors which was considered by

the trial court in releasing the respondent/accused on bail.

(f) Mr. A. Zhimomi, learned counsel further submits that if more than 2(two) year's period of time is taken to examine only two witnesses then the prosecution side will require many more years to examine the remaining 103 witnesses; and as such, no fault could be found with the impugned bail order dated 13.06.2022 passed by the learned Court below.

(g) In support of his submission, Mr. A. Zhimomi, learned counsel relied upon the following decisions of the Hon'ble Supreme Court and the High Court;

(i) Vernon Vs. State of Maharashtra and Anr in Criminal Appeal No. 639/2023

(ii) Kekhriesatuo Tepetc Vs. National Investigation Agency in Criminal Appeal Nos. 415-418 of 2019

(iii) Satender Kumar Antil Vs. Central Bureau of Investigation and Anr reported in 2022 10 SCC 51

(iv) National Investigation Agency Vs. Victo Swu @ V.K.Sumti @ Z. Victo Swu @ Akuto @ V. Assumi in CRAPL/1/2021

(v) National Investigation Agency Vs. Nasaka I Kenny in CRAPL/4/2021

11. Heard the submission of the learned counsel for the parties. We have carefully gone through the petition and the documents placed on record. Also, we have gone through the case laws referred by the learned counsel for the parties and perused the impugned bail order dated 13.06.2022 passed by

the learned trial court and the record of the case.

12. It appears that the learned trial court after considering the fact that the accused persons are in custody for about 2 years and only two prosecution witnesses has been examined out of the 105 witnesses proposed to be examined and further observing that there is likelihood of the trial being not completed within a reasonable period of time, granted bail to the respondent/accused. Therefore, considering the facts and circumstances of the case, the submission made by the parties and the case laws cited, the respondent/accused was directed to be released on bail on executing a bail bond of Rs. 1,00,000/- with a local surety of the like amount. Furthermore, the following terms and conditions of bail were also imposed; (i) the accused shall not leave the jurisdiction of the said court without prior permission of the court; (ii) the accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such fact to the court or any authority; and (iii) that the accused person shall remain present before the trial court on the date fixed for hearing of the case.

13. It is further seen that the appellant in the appeal petition had nowhere stated that the respondent/accused has violated any of the terms and conditions of the bail; nor has misused the liberty of bail granted to the respondent/accused. The learned counsel for the appellant on the other hand has fairly submitted at bar, that so far there has been no instances where they could point out that the respondent/accused has violated any of the terms and conditions of the bail imposed by the learned trial court. The learned counsel for the

appellant has also fairly submitted that the accused has been cooperating in the trial of the case by regularly appearing before the trial court. He further submitted that the trial of the case is not progressing as the witnesses are not cooperating and appearing before the trial court and stated that this may be because the accused is out on bail.

14. The learned counsel for the respondent/accused at this stage submits that as the learned counsel for the appellant has fairly submitted that the respondent/accused has not violated the terms and conditions of the bail nor has misused the liberty of bail and the respondent/accused has been regularly appearing before the trial court as and when summoned, there is no reason as to why the bail granted by the learned trial court should be cancelled. We find sufficient force in the argument made by the learned counsel for the respondent/accused.

15. As stated above, it is not the case of the appellant that the respondent accused has violated any of the terms and conditions of the bail. The only ground taken by the appellant for challenging the bail granted to the respondent/accused is that the section 43D (5)& (6) of the UA(P) Act, 1967 puts a bar to the grant of bail to the accused. Countering the submission made by the appellant, the learned counsel for the respondent/accused has relied in the case of **Union of India Vs. K. A. Najeeb**, reported in **(2021) 3 SCC 713**, wherein the Hon'ble Supreme Court has held that;

"18. It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of the Constitution. Indeed, both the restrictions under a Statue as well as

the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

19. *Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.*

20. *Yet another reason which persuades us to enlarge the Respondent on bail is that Section 43D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS. Unlike the NDPS where the competent Court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such pre-condition under the UAPA. Instead, Section 43D (5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsonetc. "*

16. We have observed that the learned trial court has

taken into account the ratio laid down by the Hon'ble Supreme Court in K.A Najeeb (supra) while considering the release of the respondent/accused on bail. The learned counsel for the respondent/accused has also submitted that the Hon'ble Supreme Court in a catena of cases has held that if the trial of the case is not expected to be completed soon, the accused person should be granted the privilege of bail with appropriate condition to ensure that the accused is available for trial.

17. From the record it appears that the respondent/accused was taken into custody on 04.07.2020, charge-sheet was laid on 29.12.2020 and the charges against the respondent/accused was framed on 06.05.2022. It is also seen that from the date of his custody, the respondent/accused had already spent over 2 years in custody; however, it is informed by the learned PP, NIA that only two prosecution witnesses could be examined by the Special Court, NIA till date out of 105 prosecution witnesses and 103 prosecution witnesses are yet to be examined. Going by the present pace of recording of evidence, the recording of the evidence of the remaining 103 prosecution witnesses is likely to take many more years to complete. In that view of the matter, we find substance in the submission of the learned counsel for the respondent/accused that the accused deserves speedy trial.

18. Under the facts and circumstances of the case, we find that the grounds so assigned by the learned trial court for extending the privilege of bail to the respondent/accused appears to be balanced on sound principle laid down by the Hon'ble Supreme Court and we are in agreement with the reasoning/grounds taken by the learned trial court to release

the respondent/accused on bail.

19. The learned counsel for the appellant submits that while considering the petition for bail, the learned trial Court has failed to take into account the ratio laid down by the Hon'ble Supreme Court in the case of ***Gurwinder Singh Vs. State of Punjab and Anr in Criminal Appeal No. 704/2024*** and arrived at an erroneous finding. In the aforesaid case, it has been observed by the Hon'ble High Court that:

"32. The Appellant's counsel has relied upon the case of KA Najeeb (supra) to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance. In KA Najeeb's case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in KA Najeeb's case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the

protected witnesses have been examined. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the behalf the appellant cannot be accepted."

20. In the instant case, the charges under section 120 B of IPC and sections 17 and 18 of UA (P) Act has been framed against the respondent/accused and in the course of the trial only two of the prosecution witnesses out of 105 has been examined by the prosecution till date, though the charge-sheet in the case, was submitted way back on 29.12.2020. While releasing the accused on bail, the learned trial court has balanced the gravity of the offence with that of the period which he had already undergone in judicial custody and the time expected to be required for completion of the trial. Under the above facts and circumstances, we are unable to concede to the submission made by the learned counsel for the appellant, to cancel the bail, solely on the ground that the learned trial court has failed to consider the mandate of section 43D (5) & (6) of the UA(P) Act, 1967.

21. As already indicated above that there is no averment in the memo of appeal alleging the violation of the terms and conditions of the bail, nor has been any statement been made

showing that the respondent/accused has misused the liberty granted to him or influenced, intimidated the prosecution witnesses. Moreover, the learned counsel for the appellant has also fairly submitted that the respondent/accused is co-operating in the trial of the case by regularly attending the court as and when summoned.

22. It is worthwhile to mention herein that while dealing with the cancellation of bail, the Hon'ble Supreme Court in the case of ***Raguber Singh Vs. State of Bihar*** reported in ***(1986) 4 SCC 481*** held that "*bail can be cancelled where:*

(i) the accused misuse his liberty by indulging in similar criminal activities;

(ii) interferes with the course of the investigation;

(iii) attempt to tamper with the evidence or witnesses;

(iv) threatens the witnesses or indulging in similar activities which would hamper the smooth investigation;

(v) there is likelihood of his fleeing to any country; attempts to make himself scarce by going underground or becoming unavailable to the investigation agency;

(vi) attempts to place himself beyond the reach of his surety etc and it is further held that these grounds are illustrated not exhausted. "

23. Again, in the case of ***Myakala Dharmarajam and Ors Vs. State of Telengana and Ors (Criminal Appeal No 1974-1975 of 2019)*** arising out of ***SLP (8882-8883 of 2019)*** it held that:

" ...it is trite law that cancellation of bail can be done in cases where the order granting bail suffers from

serious infirmity resulting in miscarriage of justice. If the ground granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant materials which have no relevance to the question of ground of bail to the accused, the High Court or the Sessions court would be justified in cancelling the bail...”

24. In the instant case, nothing has been brought before us, to show that the respondent/accused has violated the conditions of the bail granted by the lower court. We are conscious of the fact that we are dealing with an appeal preferred under section-21(4) of the NIA Act, 2004 and not a petition under section 439(2) Cr.P.C. The appeal is however preferred against the order dated 13.06.2022 passed by the court below granting bail to the respondent/accused and therefore, while deciding the present appeal, we cannot overlook, the well establish principle of law on cancellation of bail. We also reminded of the law laid down in K.A Najeer (supra) wherein the Hon’ble Supreme Court while dealing with the statutory restrictions like section-43D(5) of UAPA has held that courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like section 43D(5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

25. In view of the above discussion and findings and

considering the ratio laid down in the above referred cases and also taking into consideration that the accused has not violated any bail condition or misused the liberty granted to him or intimidated or influenced the witnesses and also taking into consideration that the accused on bail is cooperating in the trial of the case by regularly appearing before the trial court, we are unable to agree with the submission of the learned counsel for the appellant for setting aside the bail order dated 13.06.2022 passed by the learned Special Judge, NIA, Dimapur in I.A.(Bail) No. 39/2022.

26. The appeal being devoid of merit stands dismissed.
No cost.

JUDGE

JUDGE

Comparing Assistant