

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 579 of 2024

Gurjeet Singh alias Gurjant Singh alias Janta Appellant

Vs.

State of Uttarakhand Respondent

Present:

Mr. S.R.S. Gill, Advocate for the appellant.

Mr. Siddhartha Bisht, A.G.A. for the State of Uttarakhand.

Mr. Arvind Vashistha, Senior Advocate assisted by Mr. Amanjot Singh Chadha,
Advocate for the informant

Coram: **Hon’ble Ravindra Maithani, J.**
 Hon’ble Siddhartha Sah, J.

Hon’ble Ravindra Maithani, J. (Oral)

The instant appeal is preferred against the order dated 18.09.2024, passed in Bail Application No.1248 of 2024, Gurjeet Singh alias Gurjant Singh alias Janta and Another Vs. State(“the bail application”), by the court of District and Sessions Judge, Rudrapur, District Udham Singh Nagar. By it, the bail application of the appellant has been rejected in Case Crime No.609 of 2023, under Sections 16, 18, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967 (“the UAPA Act”), Police Station Kashipur, District Udham Singh Nagar.

2. Heard learned counsel for the parties and perused the record.

3. The basis of the case is FIR No.631 of 2022, Police Station Kashipur, District Udham Singh Nagar, under Section 302 IPC (“the 302 IPC FIR”), according to which, when the deceased Mahal Singh was reading newspaper outside his house on 13.10.2022, two motorcycle borne assailants approached him and opened indiscriminate fire, due to which he died on the spot. As soon as the informant of the case reached at the spot, the assailants had managed to escape from the place of incident. The

FIR in that case records that, in fact, one Harjit Singh alias Kala had made a telephonic call from Canada and threatened the deceased by demanding money. According to the prosecution, named terrorist, co-accused Arshdeep Singh Gill @ Arsh Dalla, with the help of his associate Sukhdul Dunuke @ Sukkha and others agreed to kill the deceased; they hired shooter Sadhu Singh and Manpreet Singh @ Mani @ Chuchi and the appellant and others gave shelters, provided vehicles and other assistance to the shooters, which resulted into the killing of the deceased Mahal Singh. Arshdeep Singh Gill @ Arsh Dalla had subsequently telephonically demanded money from the son of the deceased and threatened him to life. The prosecution case is that the appellant and others are threatening the witnesses. They are demanding money from various persons, which is an anti-social activity.

4. The FIR in the instant matter under the UAPA Act was lodged against 10 persons, including the appellant. After investigation, chargesheet has not been submitted against all the named accused.

5. Learned counsel for the appellant submits that no offence under the provisions of the UAPA Act is made out against the appellant; he was assigned the role in the killing of the deceased Mahal Singh to the extent that he called one Jarnail Singh and asked him to provide a motorcycle. It is argued that the appellant did not handover the motorcycle to anyone; in fact, killing of Mahal Singh was based on a property dispute with Harjit Singh @ Kala, with whom the deceased had a partnership dispute in a stone crusher business; many other persons did help the shooters, including Rajwinder Kaur, who provided meals; Sukhdev Singh Bajwa @ Sabby, who handed over the motorcycle to the

shooters, but those persons were exonerated by the police. He also raised the following submissions in his argument:-

- i) The offence under Section 302 IPC of killing of Mahal Singh was an isolated act. It has no connection with any terrorist activity.
- ii) The appellant has already been granted bail in the offence under Section 302 IPC.
- iii) The appellant did not have any connection with any known terrorist Arshdeep Singh Gill @ Arsh Dalla.
- iv) The appellant had no knowledge that the persons, who allegedly met the appellants, or whom the appellant allegedly provided motorcycle, were sent by Arshdeep Singh Gill @ Arsh Dalla.

6. Learned counsel for the appellant also submits that the appellant cannot be presumed to be in association with Arshdeep Singh Gill @ Arsh Dalla, so as to bring him within the ambit of the UAPA Act. The prosecution has to show any kind of evidence to connect the appellant with any terrorist act or with any terrorist, as such. But, it is argued that there is even no material to suggest it. Therefore, it is a case fit for bail.

7. Learned Senior Counsel appearing for the informant in the 302 IPC FIR submits that merely because the appellant has secured bail in the offence under Section 302 IPC, may not entitle him bail in the instant case; the bail has been granted not by disbelieving the prosecution case, but it is submitted that the Court had then taken into consideration the period of incarceration, which the appellant had already

undergone in that case. He raised the following points in his submission:-

- i) The appellant did make a telephonic call to Jarnail Singh for procuring the motorcycle.
- ii) It was close proximity in terms of time of the incident.
- iii) There is digital record in terms of the voice recording of the appellant as well as the video, which suggests that Prabhjot Singh Pannu @ Prabhjit Singh had taken over the motorcycle from Jarnail Singh.
- iv) There is a serious threat perception to the family of the deceased even at the hands of the appellant.
- v) The shooters had come from Punjab jail on short term bail for killing of Mahal Singh, and after committing the offence, they again entered into jail.

8. Learned Senior Counsel appearing for the informant also submits that how the appellant is connected with the terrorist organization or terrorist, it may be a matter, which State may explain, or maybe recorded in the case diary, which may be perused by the Court.

9. Learned State Counsel submits that the appellant did provide assistance to the main shooters; he provided motorcycle to them and other assistance; co-accused Manpreet Singh @ Mani @ Chuchi, who is one of the actual shooters, had knowledge that he was working for Arshdeep Singh Gill @ Arsh Dalla.

10. The Court wanted to know from learned State Counsel as to whether there is any material to suggest that the appellant had any knowledge that the shooters were working for Arshdeep Singh Gill @ Arsh Dalla? He has no answer to it. In fact, the case diary and the chargesheet is before the Court. The Court has perused it and required learned State Counsel to also indicate as to whether there is any material, which may even suggest that the appellant had knowledge that the act of killing of the deceased Mahal Singh was done at the instance of Arshdeep Singh Gill @ Arsh Dalla. He could not indicate any such material.

11. It is a stage of bail. Much of the discussion, at this stage, is not expected of. Arguments are being appreciated with the caveat that any observation made in this order shall have no bearing at any subsequent stage of the proceedings.

12. The provisions of the UAPA Act are stringent. Terrorist Act is defined under Section 15 of the UAPA Act. It reads as follows:-

“15. Terrorist act.—[(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

.....
“

13. Section 43E of the UAPA Act makes provisions with regard to the offence under Section 15 of the UAPA Act. It reads as follows:-

“43E. Presumption as to offence under section 15.—In a prosecution for an offence under section 15, if it is proved—

(a) that the arms or explosives or any other substances specified in the said section were recovered from

the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offence; or

(b) that by the evidence of the expert the fingerprints of the accused or any other definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Court shall presume, unless the contrary is shown, that the accused has committed such offence.”

14. Section 43D(5) of the UAPA Act makes special provisions with regard to bail. It reads as hereunder:-

“43D. Modified application of certain provisions of the Code.—

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true.”

15. A bare perusal of Section 43D(5) of the UAPA Act suggests that an accused person under the UAPA Act shall not be released on bail if the Court is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true.

16. In fact, the Court also requested learned State Counsel to tell as to how the appellant could be connected to Arshdeep Singh Gill @ Arsh Dalla, in his alleged subsequent telephonic threat to the son of the deceased Mahal Singh and demand of money? No material has been placed which could suggest any connect in this regard also.

17. Section 15 of the UAPA Act, which defines Terrorist act clearly provides as to what should be the intent of committing the act, broadly which is related to the national security, unity, integrity, etc. and terrorising the people.

18. Section 18 of the UAPA Act makes provisions for punishment for conspiracy, etc. An act may be defined as terrorist act, if it meets the requirement of Section 15 of the UAPA Act, and for conspiracy, there should be some material or evidence to suggest that there was link between the accused persons, which may be termed as conspiracy.

19. During the hearing of this case, this Court has also perused the record of BA1 No.1657 of 2023, with regard to the bail of the appellant in the 302 IPC FIR case *qua* killing of the deceased Mahal Singh. The statement of Navjot Singh, the son of the deceased Mahal Singh, makes it abundantly clear that, in fact, the deceased was into the business of stone crusher. He had some other partners, and, Harjit Singh @ Kala, who was staying in Canada, was not happy with the progress that has been made by the deceased. He was inimical towards the deceased and he had also threatened the deceased on multiple occasions. In fact, in the 302 IPC FIR also, suspicion was raised on Harjit Singh @ Kala in the killing of the deceased Mahal Singh.

20. If it is a property dispute in the killing of the deceased Mahal Singh, how could be termed as terrorist act under Section 15 of the UAPA Act?

21. One of the co-accused in 302 IPC FIR, Arshdeep Singh Gill @ Arsh Dalla is a terrorist named in the 4th Schedule of the UAPA Act, but can it be said that merely because Arshdeep Singh Gill @ Arsh Dalla, a terrorist, is associated in the killing of

the deceased Mahal Singh, the appellant must have knowledge of the involvement of Arshdeep Singh Gill @ Arsh Dalla as a person involved in the killing? How could such presumption be made?

22. Further, if Arshdeep Singh Gill @ Arsh Dalla had subsequently made any telephonic call to the son of the deceased Mahal Singh, how could it be associated with the appellant?

23. Learned counsel for the appellant also submits that initially the appellant was booked under Section 302 IPC, in which he got bail. Thereafter, the FIR under the Gangster Act was lodged against the appellant, and, thereafter, the FIR in the instant case was lodged against the appellant. The appellant was granted bail in the Gangster Act case. He was on bail for about six months. Thereafter, he was picked up again in the instant case.

24. Having considered the facts and circumstances of the case and having heard the rival submission, this Court is of the opinion that it cannot be said that there are reasonable grounds for believing that the accusation against the appellant is *prima facie* true. Therefore, the appellant deserves to be enlarged on bail.

25. Consequently, the appeal is allowed.

26. Let the appellant be released on bail on his executing a personal bond and furnishing two reliable sureties, each of the like amount, to the satisfaction of the court concerned, subject to the following conditions:-

- i) The appellant shall not contact any of the witnesses either physically or through any other person or electronically.
- ii) The appellant shall deposit his passport with the court concerned. The passport may only be

returned by the order of the court concerned. In case the appellant does not have passport, he shall give an undertaking to that effect to the court concerned.

- iii) He shall not leave the country without prior permission of the court concerned.

(Siddhartha Sah, J.)

13.03.2026

(Ravindra Maithani, J.)

Ravi Bisht