

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20652 of 2014

Arising Out of PS.Case No. -174 Year- 2013 Thana -NAWINAGAR District- AURANGABAD

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1. Dharmendra Yadav S/o Uday Yadav Resident of Village Pichulia, P.S.
Tandwa, District Aurangabad.

.... Petitioner

Versus

1. The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Bhaskar Shankar

For the Opposite Party : Mr. M.Rub(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

5 28-01-2015

The present application has been filed for bail

under Sections 439 and 440 of the Code of Criminal Procedure.

Heard learned counsels for the petitioner and
the State.

The petitioner is languishing in custody since
27.01.2014 in a case registered for the offences punishable
under Sections 147, 148, 149, 121(A), 124(A), 302, 353, 427 of
the Indian Penal Code, Section 17 of Criminal Law Amendment
Act, Sections 3, 4, 5 of the Explosive Substances Act and
Sections 16, 17, 18, 19, 20 and 38 of the Unlawful
Activities(Prevention) Act, 1967.

Since the case has been registered under the
provisions of the Unlawful Activities(Prevention) Act, 1967 and
Section 21A and 124A of I.P.C, the present application under
Section 439 and 440 of the Code of Criminal Procedure is not
maintainable in view of the ratio laid down by Division Bench of
this Court in Cr.W.J.C No. 487 of 2014, Aasif P.K @ Md.

Aaripha @ Aasif @ Md. Aasipha @ Md. Aasif @ Aarif versus the State of Bihar and others. Paragraph Nos. 157 and 158 reads as follows:-

“157. An accused, who has been taken into custody in connection with any offence under the NIA Act, cannot apply to the High Court seeking bail, under Section 439 of the Code of Criminal Procedure, without making any application to the Special Court or Court of Session, as the case may be, under Section 437 of the Code of Criminal Procedure nor can the accused, on rejection of his application for bail by the Special or the Court of Session, as the case may be, under the NIA Act, apply to the High Court to invoke the High Court’s jurisdiction under Section 439 of the Code of Criminal Procedure.

158. However, an accused may, in terms of provisions of Section 21(4) of the NIA Act, prefer an appeal to the High Court, against an order passed by the Special Court, or the Court of Session, as the case may be, refusing to enlarge him on bail. If a Special Court or Court of Session, as the case may be, grants bail under the NIA Act, the State cannot invoke High Court’s powers, under Section 439(2) of the Code of Criminal Procedure for cancellation of such bail. The remedy of the State lies, in such a case, in preferring an appeal, in terms of Section 21(4) of the NIA Act, to the High Court for cancellation of bail and if such an appeal is preferred, it would remain open to the High Court to examine the order, granting bail, on merit and determine if bail could at all have been granted to the accused by the Special Court or the Court of Session, as the case may be. At the same time, it would also remain open to the High Court to determine if the accused, having received bail, has misused his liberty and, whether his bail should, therefore, be cancelled or

not.”

The Section 2(1) (g) of National Investigation Agency Act, 2008 defines scheduled offence as offence specified in the schedule. The Unlawful Activities (Prevention) Act, 1967 and Section 121 to 130 of I.P.C are an item nos. 2 and 8(a) of ‘the Schedule’ of the NIA Act. Hence the present application under sections 439 and 440 of the Code of Criminal Procedure is not maintainable.

Accordingly, the application is disposed of with liberty to the petitioner to move Special Judge/Sessions Judge under section 437 Cr.P.C and against the order passed by the learned Special Judge/Sessions Judge, may prefer an appeal before the High Court under section 21(4) of National Investigation Agency Act, 2008.

(Dinesh Kumar Singh, J)

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