

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.563 of 2017

Arising Out of PS. Case No.-15 Year-2015 Thana- NIA District- Patna

Sanjay Kumar @ Sanjay Sah @ Sanjay Barnwal, son of Sri Bhagwat Prasad,
resident of Ward no.11, Naga Road, Police Station-Raxaul, District- East
Champaran(Bihar)

... .. Appellant

Versus

The Union Of India (N. I. A.)

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Chandra Shekhar Singh, Adv.
For the Respondent/s	:	Mr. S.D Sanjay (Addl. Soc. Gen.) Mr. Rajesh Kumar Verma, C.G.C.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

8 06-09-2017 Heard Sri Chandra Shekhar Singh, learned counsel for the
appellant and Sri S.D.Sanjay, learned Addl. Solicitor General,
Govt. of India, assisted by Sri Rajesh Kumar Verma, learned
counsel for the respondent/ Union of India.

The present appeal has been preferred under Section 21(4)
of National Investigation Agency Act, 2008 (hereinafter
referred to as “N.I.A. Act”) for grant of bail.

The prayer for bail of the appellant was rejected on
15.04.2017 by the learned Special Judge, N.I.A. Patna
primarily on the ground that the appellant has become an
approver and since he was in custody, in view of Sub Section



4(b) of Section 306 of the Code of Criminal Procedure, 1973 till conclusion of trial he cannot be bailed out.

Short fact of the case is that the appellant was apprehended in DRI Case No.17/2015-16 registered by the custom officials after recovery of 1188 pieces of allegedly fake Indian Currency Notes of denomination of Rs.500/-, total amounting to Rs.5,94,000/- from one of the co-accused. On the basis of information regarding smuggling of Fake Indian Currency Note from Bangladesh to India, a bus was intercepted near Ramgarhwa Railway Crossing and from the said bus, one Afroz Ansari was apprehended and from his possession said fake Indian Currency Notes were recovered. During investigation, the Government of India entrusted the case to National Investigating Agency for further investigation of the said case and , as such, the investigation was taken up and it was numbered as R.C. 15/2015. After investigation, initially chargesheet was submitted against some of the accused persons on 22.07.2016 for the offence under Sections 489B, 489C, 120B of the Indian Penal Code and Sections 16,18, 20 of U.A. (P) Act.

The appellant during investigation made disclosure and, as such, his statement under Section 164 of the Code of Criminal



Procedure was got recorded, in which he explained regarding involvement of all the culprits. Subsequently, a petition was filed on behalf of the appellant for granting pardon under Section 306 of the Code of Criminal Procedure, which was also accorded. In case, thereafter a supplementary chargesheet was submitted, however the appellant was shown as a witness. After submission of final chargesheet and order of cognizance in the case, charges were framed against accused persons and during trial, the appellant was examined as P.W.1 and he has truthfully brought the facts, which was already stated in his statement recorded under Section 164 of the Code of Criminal Procedure. Since the appellant is prosecution witness, who has supported the prosecution case in its entirety and he was discharged after cross-examination, the appellant preferred an application for grant of bail before the learned Special Judge, which was rejected by the learned trial judge and same is under challenge.

It is true that once an approver is granted pardon and he is in custody, his release till termination of trial is barred under Section 306(4)(b) of the Code of Criminal Procedure, but the word, which has been used in the said Section, prescribes that such accused may be detained till termination of trial, so that he may not deviate from his earlier disclosure regarding his



involvement along with other accused persons. In normal course, if there is statutory ban, the prayer for bail may not be entertained, but in the present appeal an affidavit has also been filed on behalf of the Superintendent of Police, National Investigation Agency and paragraph-10 and 11 of the said counter affidavit, virtually statement has been made, which indicates that if the appellant is extended the privilege of bail, the Investigating Agency has got no objection. It would be appropriate to quote paragraph nos. 10 and 11 of the counter affidavit, which is as follows:

“10. That the Answering Respondent states that since the appellant became an Approver and has supported the prosecution case and provided materials against the main accused persons and also applied for pardon and since he has been granted pardon under Section 306 Code of Criminal Procedure and has already deposed as prosecution witness in this case, therefore, the NIA in an application in the court of learned Special Judge did not oppose his bail.

11. That the Answering Respondent specifically states that considering the fact that the appellant has extended his full cooperation and support to the prosecution against the other co-accused persons and therefore the Answering Respondent is not opposing the bail of the appellant. However, he may be put to term to cooperate with the Investigating Agency and



the prosecution during the entire trial by his undertaking to remain available as and when required during trial.”

Sri S.D.Sanjay, learned Addl. Solicitor General, on instruction, submits that in the case, the prosecution has cited altogether 147 witnesses, out of them 41 prosecution witnesses have already been examined.

Considering the fact that during trial , the appellant has already been examined as P.W.1 and as admitted by the respondents/ National Investigation Agency that the appellant has supported the prosecution case disclosing complicity of other accused persons, it would not be appropriate to further detain the appellant merely on technicality. Moreover , the object under Section 306 of the Code of Criminal Procedure is to get the evidence of approver recorded truthfully. Since before the trial court, the appellant has already been examined and supported the prosecution case, in all fairness, it would not be appropriate to refuse the prayer for bail.

Accordingly, let the appellant, namely, Sanjay Kumar @ Sanjay Sah @ Sanjay Barnwal be enlarged on bail on furnishing bail bond of Rs.10,000/-(ten thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, N.I.A., Patna in connection with Special Case



No.01/2015 arising out of R.C. No.15/2015 with conditions that (i) one of the bailors must be blood relation of the appellant and (ii) as and when required, if any , further material comes , the appellant will not deviate from his earlier evidence and render full co-operation to the National Investigation Agency.

The appeal is allowed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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