

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 747 of 2018**

Gufran S/o Dr. Tajuddeen Aged About 28 Years R/o Nurani Chowk,
Rajatalab Raipur Chhattisgarh **----Appellant**

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station
Civil Lines Raipur District Raipur Chhattisgarh **....Respondent**

For Appellant	:	Ms. Fouzia Mirza, Advocate
For State	:	Mr. Anil Pillai, Dy. A.G.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Order On Board by Manindra Mohan Shrivastava, J.****01.11.2018**

Heard.

1. This appeal arises out of order dated 05.05.2018 passed by learned Special Judge, (N.I.A.) and Sessions Judge, Bilaspur (C.G.) in Special Case No. (NIA) 4 of 2015, whereby the appellant's application for grant of bail has been rejected. The appellant has been arrested for the alleged commission of offence under Section 10(A), 10(B), 11, 13, 16, 18(A), 18(B), 19 of Unlawful Activities (Prevention) Act, 1967, Sections 212, 121A, 124A, 153A of IPC & Section 25(1)(B) of the Arms Act.
2. This appeal has been filed by the appellant under Section 21(4) of the National Investigation Agency Act, 2008 as it provides for an appeal against an order rejecting application for grant of bail.
3. Learned counsel for the appellant argued that the appellant has been involved in the alleged commission of offence only on the basis of a memorandum statement given by co-accused Mohd. Sher Ali and except this, there is no other material contained in the charge-sheet which incriminates and involves the appellant in the alleged commission of offence. Learned counsel for the appellant

further argues that the conduct of the appellant during trial, is of full cooperation as the appellant, himself, had surrendered on 08.04.2015 and since then, he is in jail. Next submission of learned counsel for the appellant is that even the person on whose memorandum, the appellant is involved in the alleged commission of offence, has been enlarged on bail under the provision of Section 167(2) of Cr.P.C. It is also argued that the allegation of appellant being involved in the activities or meeting of a banned organization, would also not be made out because even according to the prosecution, the appellant is alleged to have attended some meetings on 31.12.2011 & 01.01.2012, whereas the notification banning organization was issued on 06.08.2012. Further, it is submitted that the trial is continuing for the last 3½ years and by now, only 32 witnesses, out of 64 witnesses, have been examined. Lastly, it is submitted that even if the allegations are accepted as it is, the only offence that could be made out is only under Section 10 of the Unlawful Activities (Prevention) Act, 1967, for which, maximum punishment provided under the law is two years. The appellant may be, therefore, enlarged on bail by imposing appropriate condition.

4. Learned counsel for the appellant submits that the appellant is not likely to abscond or go abroad because he has already surrendered his passport at the time of surrender on 08.04.2015.

5. Learned State counsel opposes the prayer and submits that the allegations against the appellant are serious because it is alleged that he had attended the meeting of a banned organization on two occasions and this fact has been clearly stated in the memorandum statement of co-accused Mohd. Sher Ali. He would further submit that the appellant was arrested as late as on 08.04.2015 and if at this stage, is granted bail, the progress of trial may be hampered and the appellant may also flee away from justice. Therefore, only on this ground that the trial has been delayed and the appellant is in jail since last 3½ years, the appellant may not be granted bail.

6. We have heard learned counsel for the parties and perused the relevant records/charge-sheet, case diary.

7. The appellant's involvement in the alleged commission of offence is mainly based on so called memorandum statement given by co-accused Mohd. Sher Ali, who, himself, has been enlarged on bail. Secondly, learned counsel for the State

could not specifically point out from the charge-sheet as to what is that other incriminating evidence to involve the appellant in the alleged commission of offence. Moreover, we have also taken into consideration the submission of learned counsel for the appellant that the dates of meeting, on which, the appellant is alleged to have attended, are prior to notification dated 06.08.2012. It is not disputed by learned counsel for the parties that the trial is not complete and out of 64 witnesses, only 32 witnesses have been examined. The appellant is in jail since 08.04.2015.

8. Therefore, taking into consideration the totality of the circumstances, we are of the opinion that the appellant, at this stage, deserves to be enlarged on bail. Accordingly, the appeal is allowed. The appellant shall be enlarged on bail on his furnishing a personal bond of Rs.50,000/- along with one local surety of the like amount to the satisfaction of the Trial Court subject to the following condition :

- (i) The appellant shall not leave the territorial boundaries of the State of Chhattisgarh without the leave of the trial Court.
- (ii) The appellant shall remain present in the trial Court as and when directed by the trial Court.

9. Since, this Court has only decided the bail application, any observations made in the order, should not be treated as an observation on the merits of the case and trial Court shall decide the matter in accordance with law without being influenced by the observations made herein.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge