

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 920 of 2019**

1. Bhima Kunjam S/o Lachchhu Kunjam, aged about 26 years, R/o Village Bhansi Masapara, P.S. Bhansi, District South Bastar Dantewada (C.G.)
2. Meena Telam D/o Mangal Telam, aged about 22 years, R/o Permapara Village Dhurali, P.S. Bhansi District South Bastar Dantewada (C.G.)
3. Mangalo Telam D/o Sukko Telam, aged about 25 years, R/o Village Bhansi Masapara, P.S. Bhansi, District South Bastar, Dantewada (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through: The Police Station Bhansi, District South Bastar Dantewada (C.G.)

---- State/Non-applicant

For Appellants	:	Shri Pravin Kumar Tulsyan, Advocate
For Non-applicant/State	:	Smt. Fouzia Mirza, Additional Advocate General

Hon'ble Shri Justice Prashant Kumar Mishra, J**Hon'ble Shri Justice Gautam Chourdiya, J****Judgment on Board by Justice Prashant Kumar Mishra****17.07.2019**

Heard.

2. This appeal is filed under Section 21 (4) of the National Investigation Agency Act, 2008 (for short 'NIA Act 2008') aggrieved by the order dated 29.03.2019 passed by the Special Judge (NIA Act/Scheduled Offences), Jagdalpur, District Bastar (C.G.) in Special Case No. 20/2019 thereby rejecting the application filed by the appellants under Section 439 Cr.P.C. seeking bail.

3. The appellants were arrested by Dantewada police on 24.11.2018 in connection with Crime No. 18/2018, registered at Police Station Bhansi for the offence punishable under Section 341 of IPC; Sections 150 & 152 of Railway Act 1959 and Sections 13(1), 38(2), 39(2) of Vidhi Virudh Kriya Kalap Nivaran Adhiniyam, 2008.

4. The allegations of the prosecution in the trial pending against the appellants are that on 25.07.2018, the appellants involved themselves in removing fish-plate of railway track near km 416/25-27 while passenger train was moving from Koraput

to Kirandul. However, the driver of the train, loco-pilot Balram Thella, located removal of fish-plate and stopped the train failing which there would have been serious accident resulting in loss of number of lives.

5. Learned counsel for the appellants would submit that there is no material against the appellants connecting them with commission of crime, therefore, they are entitled to be released on bail. He would also submit that the police has not sent information to the National Investigation Agency (for short 'NIA') as required under Section 6 of the NIA Act, 2008, therefore, the entire investigation stands vitiated.

6. Learned State counsel would oppose the prayer for grant of bail to the appellants.

7. We have perused the case diary and the charge-sheet.

8. The main limb of argument of Shri Pravin Kumar Tulsyan, learned counsel for the appellants, is that unless the State police inform about occurrence of scheduled offences to the NIA, there would no occasion for the NIA to consider and take up the investigation itself and the same has not been done in the present case, therefore, the investigation is faulty and benefit thereof should go to the accused.

9. A perusal of provisions contained in Section 6 to 10 of the NIA Act, 2008 occurring *Chapter III* of the NIA Act, 2008 dealing with investigation by the NIA would manifest that whenever an information is received by NIA in respect of commission of scheduled offences, the NIA may take up the investigation of the case, but, there is no bar under the statute for the State police in continuing with the investigation till the NIA decides one way or the other. Likewise, there is no provision under the NIA Act, 2008 as to the consequence of failure of the State police to inform the NIA about commission of the scheduled offences in a particular police station. In the absence of any provision providing for consequences of such failure of State Government, the provisions contained in Sub-section (1) to (6) of Section 6 of the NIA Act, 2008 has to be read as directory and not mandatory

because reading it otherwise would make number of investigations faulty and fatal adding to benefit to the accused involved in serious offences.

10. In our considered view, the legislature has not provided for consequences of non-submission of information by the State Government to the NIA about commission of scheduled offences, with a view to provide for smooth and unhindered investigation by whatever agency with whom offence has come to notice within whose jurisdiction offence is committed. NIA may embark on the investigation as and when requested by the State Government or the Central Government/NIA by itself decides to take up the investigation.

11. The appellants have been arrested after tipoff by the villagers about involvement of the appellants in commission of the subject crime. Merely because only common articles like *iron-sabbar* (a crowbar) and *tota-paana* (specially designed as spanner) have been recovered from the appellants, it cannot be concluded at this stage that the same would not be sufficient to remove the fish-plate. Area in question is frequently facing naxal activities, therefore, considering the nature of accusation, we are not inclined to allow the appeal for releasing the appellants on bail.

12. Accordingly, the appeal is dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge