

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 137 of 2020

1. Kawasi Kosa, S/o Kawasi Hidma, aged about 30 years, Caste Madiya, R/o Mandir Para Bhadri Mahu, PS Darbha, District Bastar (CG)
2. Madkami Joga, S/o Madkami Hadma, aged about 41 year, aged about 41 years, Caste Madiya, R/o Village Chikpal Patel Para, PS Tongpal, District Bastar (CG) ----- **Appellants.**

Versus

N.I.A. New Delhi, through Superintendent of Police, N.I.A. Beuro Office Raipur, CG --**Respondent**

For the Appellants :-	Mr. Vikash A. Shrivastava, Advocate.
For the State :-	Mr. Ravish Verma, GA.
For the NIA :-	Mr. Kishore Bhaduri and Mr. Pankaj Singh, Advocates.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava, J.
23.11.2020

Heard.

2. Appellants have been involved in the alleged commission of offences under Sections 147, 148, 149, 121, 121(A), 122, 341, 302, 307, 396, 397, 427, 120 (b) of IPC, Section 3, 4 & 5 of Explosive Act, Section 25 (1) (i-B)(A) & 27 of the Arms Act and Sections 16, 18, 20, 38 (2), 39 (2) & 40 (2) of Unlawful Activity (Prevention) Act where large number of politicians, police officers and other persons were murdered in a naxalite attack on the cavalcade of vehicle.

3. Learned counsel for the appellant would argue that the application for bail has been rejected by the learned Special Court without taking into consideration the material available on record

only on the ground that the appellants are involved in a heinous offence of serious nature. His argument is that only on the ground of seriousness of allegation a person cannot be denied bail if there is no cogent and clinching evidence collected by the prosecution to *prima facie* show his involvement in the crime in question. He would argue that there are no specific allegations against the appellants by the eye witnesses that they fired gunshot with the help any weapon and that their involvement is more on the ground that they were associated with the team of naxalite in the attack on the cavalcade and killing people. He would further submit that in the present case the appellant No.1 Kawasi Kosa is in jail since 06.09.2014 whereas appellant No.2 Madkami Joga is in jail since 04.10.2015 and thus they are behind the bars for last 5-6 years but the trial has not been yet been completed probably for the reason that out of a long list of 91 witnesses, only a half thereof, being 45 in number, have been examined by the prosecution and the remaining could not be examined due to the on-going pandemic situation.

4. On the other hand, learned counsel for the State and NIA would submit that the appellants are involved in a very heinous offence of mass killing of innocent people at the hands of naxalites. They would argue that there are large number of witnesses whose statements under Sections 164 Cr.P.C. were recorded in which it has been stated that the present appellants were involved in the crime in question being associated with those

naxalites who attacked the cavalcade of the politicians and the security people. He would submit that though some of them have been examined, some are yet to be examined. He would further submit that out of 91 witnesses, 45 witnesses have already been examined. He submits that as the trial process has begun after 17.11.2020, the trial is likely to be concluded expeditiously. In support the submission, counsel for the NIA relied upon the decision of the Apex Court in the matter of **National Investigation Agency Vs. Zahoor Ahmad Shah Watali** in 2019 (5) SCC 1 and **Abhay Nayak Vs. State Of Chhattisgarh** in CRA No. 1213 of 2019 passed on 20.12.2019 by the High Court of Chhattisgarh.

5. True it is that the appellants have remained in jail for quite long time but at the same time, this Court cannot ignore the severity and gravity of the allegation against them for which they are being tried along with other accused persons. The incident was of genocide where large number of persons were killed in the naxalite attack and the appellants have been involved with the aid of Section 120-B of involved in the conspiracy which culminated in the ghastly attack and brutal murder. According to counsel for NIA, there are number of witnesses who have spoken against the appellants in their statements recorded under Section 164 Cr.P.C. and out of them some have been examined and some are yet to be examined. We are informed by the counsel for the parties that out of 91 witnesses, 45 witnesses have already been examined but the remaining witness could not be examined obviously

because of the pandemic situation. However, now the trial proceedings have already begun on 17.11.2020 through physical functioning of the Court, the trial is likely to be concluded without any further delay.

6. Therefore, taking into consideration the preponderance of probability as dealt with above, particularly the severity and the gravity of the allegation on which the appellants are being tried, we are not inclined to release the appellants on bail only on the ground of long delay in the trial. Application is accordingly dismissed. However the trial Court is expected to conclude the trial as expeditiously as possible.

7. Accordingly, we do not find any reason to interfere with the order passed by the Learned Special Judge rejecting the bail application of the appellant.

At the same time, we hereby direct the trial Court to conclude the trial as early as possible without granting any unnecessary adjournment to any of the parties and ensuring presence of the witnesses by adopting even coercive measures if they do not turn out in response to the summons issued to them. Taking into consideration the fact that out of 91, only 45 witnesses are yet to be examined we give the appellant liberty to revive their prayer for bail if the trial is not concluded by the next 6 months.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge