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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-23563-2020

Date of Decision: 16th October, 2020

Jasbir Singh

Petitioner

Versus

State of Punjab

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. G.S. Bedi, Advocate for the petitioner.

Mr. H.S. Multani, AAG, Punjab.

AVNEESH JHINGAN, J (Oral):

The matter is taken up for hearing through video conference due to COVID-19 situation.

This petition is under Section 439 of the Code of Criminal Procedure, 1973 seeking bail in FIR No. 116, dated 6th June, 2020, registered under Sections 295 of the Indian Penal Code, 1860 and 120, 120-B, 121-A and 153-A (added later on) at Police Station Chattiwind, Amritsar.

The FIR was registered on the basis of information that two persons sitting in a room in graveyard were conspiring to kill people belonging to particular community on event of Ghallughara. To execute the plan they were to call their companions and further make the

community to leave the State. The petitioner alongwith Avtar Singh were nabbed from the spot. The statement of the co-accused was recorded to the effect that Avtar Singh was known to one person from Pakistan and he had accepted his Facebook request. During chatting the Pakistani asked him to collect photos of cantonment area. It was disclosed that petitioner also was in touch with one Pakistan national.

The petitioner moved an application for bail, same declined vide order dated 29th July, 2020, aggrieved present petition is filed.

On 7th September, 2020, learned State counsel apprised this Court that Section 13 of the Unlawful Activities (Prevention) Act, 1967 (for short '1967 Act') has been added and an application for extension of time for filing the challan is pending consideration. On 10th October, 2020 reply by way of an affidavit was filed. Para 7 of the affidavit reads as under:-

“7. That it is humbly submitted that on the basis of evidence came on record during the course of investigation of the aforesaid case/FIR No. 116, dated 06/06/2020, under Section 295 IPC (added Sections 120, 120B, 121-A, 153-A IPC on 7.6.2020, 295A IPC on 1.9.2020 and Section 13 of the Unlawful Activities Prevention Act, 1967 on 3.9.2020), registered at Police Station Chattiwind, Amritsar Rural, it was observed that the present case is linked with Referendum 2020, and the petitioner and co-accused are involved in unlawful activities in order to pose threat to the sovereignty and integrity of the country. Therefore, offence under Section 13 of the Unlawful Activities Prevention Act, 1967 has been added vide DDR No. 21, dated 03.09.2020 in the present

case by SHO of Police Station Chattiwind, Amritsar Rural and thereafter the investigation of the present is now being carried out by the Deputy Superintendent of Police, PBI and Special Crime/Economic Property and Cyber Crime Unit, Amritsar Rural. Therefore, an application has been filed under Section 42-D of the said Act before the Court of Ld. Illaqa Magistrate on 3.9.2020 by the Ld. Public Prosecutor for extending time period of custody of the accused from 90 days to 180 days in the present case, which has been allowed on 30/09/2020 by the Court of Ld. JMIC, Amritsar and custody of the accused has been extended for 30 days by the Ld. Court.”

It is evident that Section 13 of 1967 Act has been added and thereafter, the time period of the custody of the petitioner was extended by learned Illaqa Magistrate on 3rd September, 2020.

Learned counsel for the petitioner submits that initiation of proceedings under Section 13 of 1967 Act is a mis-use of the statute, the same was added at a belated stage to defeat the right of the petitioner under Section 167 of the Code of Criminal Procedure, 1973 (for brevity Cr.P.C.)

The contention of the petitioner can not be considered in these proceedings.

Section 2 (1) (d) of 1967 Act and Sections 2 (1) (f), (g), (h), relevant portion of 11, 21, 22, and schedule to the National Investigating Agency Act, 2008 (for short 'NIA Act') would be relevant and are reproduced:-

Section 2 (1) (d) of 1967 Act:-

“Section 2 (1) (d): “court” means criminal court having jurisdiction, under the Code, to try offences under this Act [and includes a special court constituted under section 11 or under [section 22] of the National Investigation Agency Act, 2008.

Section 2 of NIA Act:-

2. Definitions.—(1) *In this Act, unless the context otherwise requires,—*

(f) “Schedule” means the Schedule to this Act;

(g) “Scheduled Offence” means an offence specified in the Schedule;

(h) “Special Court” means a Special Court constituted under section 11 or, as the case may be, under section 22;

Section 11 of NIA Act

11. Power of Central Government to constitute Special Courts:

(1) The Central Government shall, by notification in the Official Gazette, for the trial of Scheduled Offences, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

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Section 21 of NIA Act:

21. Appeals.—(1) *Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.*

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any

court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days.

Section 22 of NIA Act:

22. Power of State Government to constitute Special Courts:

(1) The State Government may constitute one or more Special Courts for the trial of offences under any or all the enactments specified in the Schedule.

(2) The provisions of this Chapter shall apply to the Special Courts constituted by the State Government under sub-section (1) and shall have effect subject to the following modifications, namely—

(i) references to “Central Government” in sections 11 and 15 shall be construed as references to State Government;

(ii) reference to “Agency” in sub-section (1) of section 13 shall be construed as a reference to the “investigation agency of the State Government”;

(iii) reference to “Attorney-General for India” in sub-section (3) of section 13 shall be construed as reference to “Advocate-General of the State”.

(3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

(4) On and from the date when the Special Court is constituted by the State Government the trial of any offence investigated by the State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted.

The term 'court' is defined under Section 2(1)(d) of 1967 Act, it means the courts under Cr.P.C. having jurisdiction to try offences under this Act and includes special courts constituted under Section 11 or 22 of NIA Act. As per Section 2(1)(f) of NIA Act 'schedule' mean schedule to NIA Act. Scheduled offences are defined in 2 (1)(g) i.e. offences specified in the schedule to the Act. Section 2 (1) (h) describes 'special courts' to mean the courts constituted under Section 11 or 22 of NIA Act. Section 11 of NIA Act empowers Central Government to notify one or more special courts to try the scheduled offences. Under Section 22 of NIA Act the State Government can notify special courts or court for trial of scheduled offences. As per Section 21(1) of NIA Act appeal against any judgment, sentence or order of the special court will lie to the High Court, both on facts as well as law. Section 21(2) of NIA Act provides

that the appeal shall be heard by bench of two Judges of the High Court and as far as possible would be disposed within three months from the date of admission of the appeal. As per Section 21(4) of NIA Act against order granting bail or refusing bail, appeal will lie to High Court. The Schedule to NIA Act includes the Unlawful Activities (Prevention) Act 1967.

The conclusion is that the offences under 1967 Act are the scheduled offences and the special courts constituted under section 11 or 22 of NIA Act have jurisdiction to deal with such cases. The special court has been duly constituted in State of Punjab. Resultantly, with the change of circumstances i.e addition of section 13 of 1967 Act in the FIR, only the special court can deal with such a case including the bail application.

In such circumstances, the order passed by the Additional Sessions Judge declining the prayer of bail needs no interference. The petition is dismissed.

However, petitioner would be at liberty to avail remedy available to him in accordance with law.

[AVNEESH JHINGAN]
JUDGE

16th October, 2020
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |