

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.280 of 2021

Arising out of PS. Case No.-2 Year-2017 Thana- NIA District- Patna

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Gajender Sharma @ Gajender Thakur @ Gajendra Kumar, aged about 26 years (Male), S/o Hridayanarayan Thakur R/o village- Bakhri, P.S.- Adapur, District- East Champaran, Motihari.

... .. Appellant/s

Versus

1. The Union of India through Director, Nia, New Delhi India
2. The Officer-in-Charge, Police Station, NIA, New Delhi India

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Siddharth Harsh, Advocate
For the Respondent/s : Ms. Chhaya Mishra, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

3 26-10-2021 Heard Mr. Siddharth Harsh, learned counsel for the appellant and Ms. Chhaya Mishra, learned Special Public Prosecutor for National Investigating Agency (NIA).

In the present appeal preferred under Section 21(4) of the National Investigation Agency Act, 2008, the appellant has prayed for setting aside the order dated 19.02.2021 passed by the learned Special Judge, NIA, Patna in Special Case No. 02 of 2017 arising out RC No. 02 of 2017 instituted for the offences punishable under Sections 150 of the Railways Act, 3/4 of the Explosive Substances Act and 18, 18(B), 20 and 38 of the Unlawful Activities (Prevention) Act whereby and whereunder



his prayer for bail of has been rejected.

Earlier also the appellant had challenged the order passed by the court below whereby his prayer for bail was rejected vide Cr. Appeal (DB) No. 1348 of 2017 which was dismissed on merit vide order dated 08.01.2018.

Mr. Siddharth Harsh, learned counsel appearing for the appellant submitted that the appellant is not named in the FIR. His complicity in the instant case transpired during investigation on the basis of bank transaction alleged to have been made by co-accused, Sansul Hoda on direction of another co-accused, Brij Kishore Giri which was worth Rs. 5,000/-. He contended that the said amount was transferred in the account of Upendra Thakur who is brother of the appellant. He submitted that the appellant has nothing to do with the remittance of transfer of Rs. 15,000/- Nepali Currency to the co-accused Brij Kishore Giri from U.A.E. by the co-accused, Sansul Hoda. He submitted that though the appellant is in custody since 16.02.2017, the trial is inconclusive. Out of 138 charge-sheet witnesses only 33 have been examined so far. He contended that the charges levelled against the appellant are still to be proved. The appellant should be kept in confinement as an undertrial prisoner for an infinite period.



Opposing the prayer for bail of the appellant, Ms. Chhaya Mishra, learned Special Public Prosecutor appearing for the NIA submitted that the prosecution is vigilant in examining its witnesses before the trial Court. She contended that the delay in examination of witnesses occurred as the functioning of the trial was paralyzed due to COVID-19 Pandemic. However, since normalcy has been restored and the court functioning has stabilized, the remaining witnesses on behalf of the prosecution would be examined expeditiously. She contended that the prosecution would make all endeavours in order to examine all the witnesses within the next nine months. On merits, she contended that the investigation revealed that the appellant was one of the conspirators in planting improvised explosive device on a railway track. The conspirators also tried to explode the explosive. She contended that the transaction of money from the account of appellant and recovery of other incriminating materials from his studio clearly establish his active participation in the commission of the offence.

Having heard the parties and the materials available on record, we see no error in the order passed by the court below. Accordingly, the appeal is dismissed.

Before parting with the case, we must observe that all



efforts should be made by the prosecution to produce the remaining witnesses within the stipulated time of nine months.

The Trial Court is also directed to hold the trial on day-to-day basis and make an endeavour to conclude the trial within one year from the date of receipt/production of a copy of the order. In case, the trial is not concluded within one year from the date of receipt/production of a copy of this order, the appellant would be at liberty to renew his prayer for bail before the Court below itself.

(Ashwani Kumar Singh, J)

(P. B. Bajanthri, J)

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