

CRA No. 209 of 2020

**Ashim @ Asim Kumar Haranath Bhattacharya @ Asim
Hari Nath Bhattacharya @ Aseem Kumar Bhattacharya
-Vs.-
National Investigation Agency (NIA)**

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sankar Chatterjee,
Mr. Santanu Maji,
Mr. S. Saha,
Mr. P. Basak,
Mr. R. Tah

... For the appellant.

Mr. Y. J. Dastoor, Ld. ASG.
Mr. Sundeep K. Sadawarte,
Mr. D. Tandon,

... For the NIA.

1. This is an appeal under Section 21 of the National Investigation Agency Act, 2008 (hereinafter referred to as "The NIA Act"). The appeal is directed against an order of the Special Court refusing bail. Therefore the appeal falls under sub-Section (4) of Section 21 of the NIA Act.

2. The sixth accused before the Special Court, namely, Asim Kumar Haranath Bhattacharya, is the appellant.

3. The learned Senior Counsel appearing for the appellant argued that the appellant is in custody for more than nine years and that he is aged more than 74 years. It is argued that there is no reason whatsoever to believe that the trial of the case will conclude in the near future since the first among the witnesses, PW 1, is being examined before the Special Court and there is a fairly very long list of persons cited as witnesses to be examined.

4. Learned Additional Solicitor General, assisted by the prosecutor for the NIA, argued that this is not a case

where the sixth accused could be granted bail. He pointed out that the quality of allegations levelled against the appellant contains to such attributes which would tantamount to show that the operational modality as attributable to the sixth accused are such that they inexplicably fall within the provisions of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "The UAP Act"); Section 120B read with Section 121, 121A, 122 of IPC; and, Sections 25(1)(a), 25(1A) and 25(1AA) of the Arms Act. It is pointed out that the charging provision in so far as the UPA Act is concerned, precluded under Sections 18 and 20 of that Act. Learned Additional Solicitor General further pointed out that in spite of Section 19 of the NIA Act efforts are not been taken by the Special Court to priorities the trial of cases under the NIA Act.

5. Being an appeal, we have examined the material papers in relation to this case, as made available along with the appeal. We have also considered the reasons given by the Court below to refuse bail to the sixth accused through the impugned order - Order No. 14 dated 25.02.2020 in NIA Case No. 1 of 2012.

6. The Court below has noted that the materials on record show that after framing charges, the trial has already commenced and PW 1 was examined partly and the next date is fixed for further examination of PW 1. According to the Special Judge, it appears from the materials on record that the offence involved in this case is serious in nature and there are sufficient incriminating materials on record which reflects about the prima facie involvement of the sixth accused in the alleged offence. It was, therefore, that the Special Judge did not find that mere long detention of this accused person behind the bars or delay in completing the trial cannot be a ground for enlarging sixth accused on bail.

7. We see from the materials papers as well as submissions made by the Learned Senior Counsel for the appellant and the submissions made by the Learned Additional Solicitor General that during the course of proceedings, there were even proceedings being carried to the High Court either challenging the proceedings or seeking other orders. This Court had also called for records at some point of time. As of now, the trial has commenced. There is nothing on record, which would indicate that the National Investigating Agency or the prosecutor could be attributed with having contributed to delay in the trial. We also see from the material papers that the sixth accused, on whose behalf this appeal is filed, had himself changed his Advocate appearing for him before the Special Court on occasions more than two. The records also disclose that the appellant, even during the course of proceedings where interlocutory matters were taken up or the accused persons were produced and subjected to judicial authority, the appellant had conducted himself in such manner which discloses that he was not appropriately cooperating with the judicial process. We make this observation on the basis of some of the judicial orders of the Court below which are part of the material papers before us. Exchange of words in the open Court by the appellant/sixth accused even as against the lawyer appearing for him, that too interfering and disturbing the court is not something to be countenanced that though it is something that weighs with us while considering this application for bail, where we stand advised by the decisions of the Hon'ble Apex Court referred to in the case of **Union of India-vs.-K.A. Najeed** reported in **2021 SCC OnLine SC 50** and **Rajesh Ranjan Yadav @ Pappu Yadav-vs.-CBI through its Director** reported in **(2008) Cr. L. J. 1033**.

8. On the plea to set aside the order of the NIA Act refusing bail to the appellant – accused no. 6, on a

comprehensive consideration of the materials on record and having in mind the decisions of the Apex Court; and examining the quality of the order passed by the Special Court refusing bail, we are of the opinion that the age of the appellant and the period of detention in jail for more than nine years by themselves do not persuade us to take a different view than that which has taken by the Special Judge. For the aforesaid reasons, this appeal against the order of the Special Court and the plea before us for grant of bail are liable to be rejected.

9. On the basis of the submissions on either side and the material papers before us, we see that all that is required to secure the ends of justice is to ensure that speedy trial happens in terms of mandate of the statutory provisions contained in the NIA Act. We say this because Section 19 of the NIA Act provides that a trial by Special Court to have precedence. It lays down that the trial under the NIA Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other cases shall, if necessary, remain in abeyance.

10. Even if the Special Court so constituted may have on its board other matters under other laws including penal laws, precedence has necessarily to be given to the cases relating to offences punishable under the different enactments which fall within the Schedule of the NIA Act. This pithily is the legislative mandate in Section 19 of the NIA Act.

11. Having regard to the contents of Section 19 of the NIA Act as noted and adverted to by us hereinabove, we direct the Court below to be guided by Section 19 of the

NIA Act and ensure top priority for trial of this NIA case and any other cases which may be before it in terms of the rule of priority contained in Section 19 of the Act. This means that the Court below will try such cases on day-to-day basis. On every day NIA cases will be treated as the top priority. It is for that Court to decide as to how it has to manage its board though we may, being the Court with supervisory jurisdiction, indicate that the Learned Judge may consider scheduling this case for trial on every day, may be in a particular time slot so that it gets priority in conformity with the legislative mandate contained in Section 19 of that Act.

12. We record the submission of the learned Additional Solicitor General supported by the prosecutor for NIA that the matter may be taken up by the Trial Court from 2.00 p.m. to 4.30 p.m. and further that the matter shall be taken up and proceeded with on a day to day basis.

13. The appeal being CRA 209 of 2020 is accordingly dismissed.

14. Criminal Section is directed to supply urgent photostat certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Thottathil B. Radhakrishnan, C.J.)

(Aniruddha Roy, J.)