

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.11 OF 2022

SATYANARAYANA RANI)
Aged about 72 years, Currently incarcerated)
as UTP965 at Mumbai Central Prison, Mumbai)
Otherwise H.No. 1-124/8, Thimmapur,)
Thimmapur Mandal, Mandamarri, Telangana)
504209)...APPELLANT

V/s.

1) NATIONAL INVESTIGATION AGENCY)
)
2) STATE OF MAHARASHTRA)...RESPONDENTS

Ms.Payoshi Roy i/by. Dr.Yug Mohit Chowdhary, Advocate for the Appellant.

Mrs.Aruna Pai, Advocate for the Respondent No.1 – NIA.

Mrs. P. P. Shinde, APP for the Respondent No.2 - State.

**CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.**

**DATE : RESERVED ON 7th JULY 2022
PRONOUNCED ON 15th JULY 2022**

JUDGMENT : (PER : V. G. BISHT, J.)

1 Rule. Rule made returnable forthwith. By consent, heard finally at the stage of admission.

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2 By this appeal under Section 21 of the National Investigating Agency Act, 2008 (NIA for short), the appellant seeks quashing and setting aside of the impugned order dated 20th August 2021 passed by the learned Special Judge - NIA, City Civil and Sessions Court, for Greater Bombay, below Exhibit 56 in NIA Special Case No.06 of 2019 by which the appellant's application for bail came to be rejected and as such, seeks his enlargement on bail.

3 Before we appreciate the rival contentions of the parties, we deem it proper to outline the factual aspects of the prosecution case.

4 On 1st May 2019, an IED blast took place under the bridge on Purada-Kurkheda Road, Gadchiroli, in which fifteen QRT policemen and one civilian driver were killed. On 2nd May 2019, First Information Report (FIR) No.19 of 2019 was registered at Purada Police Station, Gadchiroli under Sections 302, 353, 120B, 147, 149, 427 of the Indian Penal Code (IPC), Sections 16, 18, 20, 23 of Unlawful Activities Prevention Act (U.A.P. Act for short),

Sections 4 and 5 of Explosive Substances Act and under Sections 5 and 8 of Arms Act.

5 The prosecution then alleges that on 11th June 2019 the appellant came to be arrested in Hyderabad. On 24th June 2019 the investigation was transferred to NIA and accordingly, NIA registered FIR No.2 of 2019 on 25th June 2019.

6 The prosecution further alleges that on 19th June 2019 the house in which the appellant and his wife resided in Hyderabad was searched and various electronic items and a sum of Rs.10,32,000/- were seized. Chargesheet was filed on 4th December 2019. So also necessary sanction was granted on 21st September 2020 in respect of appellant and other co-accused under the Maharashtra Control of Organized Crimes Act (MCOC Act for short). A supplementary chargesheet was filed under the MCOC Act against all the accused in September 2020.

7 On 20th August 2021, the learned Special Judge rejected the appellant's application for bail. Hence, the present appeal.

8 Ms. Payoshi Roy, learned counsel for the appellant, at the very outset submits that the material on record does not substantiate any of the allegations levelled against the appellant and the appellant has been arrested and prosecuted only on the basis of suspicion as it is the prosecution case that the appellant's wife is the leader and member of the banned organization CPIM. There is no shred of evidence to link the appellant to the present offence i.e. the IED blast resulting in the death of 15 policemen and one civilian driver.

9 The learned counsel next argued that though the prosecution alleges that the appellant attended a conspiracy meeting in July 2018 but the same has not been substantiated and even assuming for the sake of argument that the appellant did attend the meeting, that in itself will not incriminate the appellant in the alleged offences.

10 Lastly, the learned counsel vehemently submitted that the prosecution wants to believe that the present appellant is also known as Kiran or Kiran Kumar but there is no evidence to that effect.

11 According to the learned counsel, the appellant is more than 70 years old with severe ailments and restricted mobility. The charge is yet to be framed by the trial Court and the trial is not likely to commence in the near future and will take long time to conclude. Having regard to all these circumstances, the appellant's appeal for bail deserves consideration.

12 Mrs. Pai, learned special public prosecutor, strenuously opposed the submissions advanced by the learned counsel for the appellant and invited our attention to the affidavit-in-reply filed on behalf of NIA. The learned special public prosecutor also invited our attention to the various statements at page nos.1, 15, 21, 29 and 36 of compilation of statements / documents and emphasized that there is prima facie involvement of the appellant

in the alleged offences. The learned special public prosecutor, from the chargesheet, also invited our attention to the quarterly edition of Prabhat magazine and submitted that the appellant is the publisher of the said magazine which contains the details of martyred comrades. According to the learned special public prosecutor, the material on record would suggest that the appellant and his wife are involved in unlawful activities of CPI (Maoist) and, therefore, the learned Special Judge was justified in rejecting the appellant's bail application.

13 We have perused the affidavit-in-reply of NIA and also the record with the assistance of the learned special public prosecutor.

14 Before advertng to the merits of the prosecution case, we would like to set at rest the controversy in respect of the name of the appellant.

15 According to the prosecution, the appellant is also known by his first alias as Kiran Kumar followed by second and third aliases viz. Sudhakar and Kiran. In support of this, learned special public

prosecutor, during the course of argument, invited our attention to Column No.6 of the Arrest / Court surrender form filed at Page No.61 of the compilation of statements / documents filed by the NIA in support of its case. It may be that the appellant's names are shown as Satyanarayana Rani alias Kiran Kumar alias Sudhakar alias Kiran but when the learned special public prosecutor was confronted during the course of argument as to the basis for the same, the learned special public prosecutor took us through the various statements of prosecution witnesses which we propose to deal with immediately hereinafter. Probably, the answer may or may not lie in those statements but then unless we go through the statement of prosecution witnesses, we cannot put our stamp of approval on this aspect and as also on the merits of the prosecution case.

16 First statement in line is that of KW7. His statement shows that CPI (M) has its motive to overthrow the Government of India by destroying state machinery and to establish Jantana Sarkar (the Indian People's Democratic Federal Republic). The party has

Central Committee which works under Politburo. According to this witness, he personally met Sonu @ Bhupati @ Sonu dada (wanted accused) in 2014 while on way to training. His statement further shows that on being asked about Narmadakka, he informed that Narmadakka attended and headed the DVC meeting of June 2012 and she met all other protection team of naxal members. Further, in second week of July 2018, a special meeting was held at Mosparshi Jungle area which was headed by Sonu dada (wanted accused), CCM and Narmadakka alias Didi, DKSZC and participated by Kiran, DKSZCM / incharge of Dandkaranay Publication team / incharge Prabhat Editorial team and others. In the said meeting, Sonu dada proposed that they should take revenge of Kasnasur-Boriya encounter / incident wherein forty naxals were killed by Gadchiroli police in April 2018. Narmadakka (A-1) also suggested to make efforts to increase naxal manpower by recruiting new militia from villages and they should be trained in weapon handling, bomb making etc. for better results for police party killing. Narmadakka, Kiran, Giridhar, Vilash Kolha and all present DVC members supported the proposal

of Sonu dada and it was decided to take revenge by killing more police personnel by planting IED. The statement further shows that accordingly in third week of July 2018, this witness along with others was selected by Narmadakka for training and they attended two days training regarding preparation of IED/bomb, booby trap, remote connection, mine planting etc. in Kahapur Jungle at Abuj Maad area. It appears that, however, the said operation was withdrawn due to overflow of Paralkotta river after heavy rains.

17 Interestingly, in the above statement, though the witness refers to the alleged alias name of appellant and mentions that he attended July 2018 meeting, but the said statement nowhere suggests that the said person Kiran is none other than the appellant or the husband of Narmadakka (A-1). Even the statement does not show that this witness along with others including the appellant were selected for training programme regarding preparation of IED / bomb, booby trap, remote connection, mine planting etc. in Kahapur Jungle at Abuj Maad

area. What is apparent is that ultimately the operation was given up because of overflow of Paralkotta river.

18 In the context of above analysed statement of KW7 it is quite relevant to note the so called confessional statement of accused Salim @ Shivram @ Dinkar Gota (A-9) was heavily relied by the learned special public prosecutor.

19 This accused also reiterates the transaction which had taken place in the meeting of July 2018 and the proposal put forth by Sonu dada in respect of taking revenge of Kasnasur-Boriya encounter. This accused also reveals that Narmadakka in the said meeting had proposed to make efforts to increase naxal manpower by recruiting new militia from villages and they should be trained in weapon handling, bomb making etc. for better results for police party killing. Narmadakka, Kiran, Giridhar, Vilash Kolha and all present DVC members supported the proposal of Sonu dada and it was decided to take revenge by killing more police personnel by planting IED. At the cost of repetition, we may remind here that we have already noted from the statement

of KW7 and as also the confessional statement of A-9 that both of them nowhere categorically say in unequivocal terms that Kiran Kumar, who attended the said meeting and seconded the proposal of Sonu dada was none other than the husband of Narmadakka or the present appellant.

20 The next statement is that of KW6. However, no role is attributed to the present appellant throughout the statement.

21 We also do not find anything incriminating against the appellant from the statement of Dr. Khatam Chandra Shekhar.

22 The statement of Shri. Chilveri Rameshkumar shows that the appellant was his tenant. It appears that on 19th June 2019 the police approached him and took search of house of the appellant in the presence of panch witnesses and seized laptop, tablet, mobile, pendrive, memory card, hard disk and other important papers along with cash amount.

23 The statement of a witness relied upon by the learned special public prosecutor i.e. KW2 to show that Kiran was the husband of Narmadakka and is the appellant, cannot be read or relied in the present case, inasmuch as, the said statement is not a part of chargesheet / supplementary chargesheet filed in the present NIA case. The said statement is a statement filed in NIA Case No.414 of 2020 and as such, no reliance can be placed on the said statement, which is not part of the chargesheet / supplementary chargesheet, in the present case.

24 Apart from the above statements, the learned special public prosecutor, in consonance with her submissions, took us to page no.6 of chargesheet (Annexure E) and invited our attention to the magazine namely Prabhat, a quarterly magazine of CPI (M) and which according to the learned special public prosecutor contained ideology against Government and other naxal related matters and that it was found from the house of the appellant. At once it may be recapitulated from the statement of KW2, referred

to in the beginning, that Narmadakka and Kiran were working in publication wing of CPI (Maoist) in Dandakaraya.

25 We have carefully seen the pictorial presentation of Prabhat magazine. However, we may note here that the hard copy of the same is not produced before this Court for perusal. The said magazine nowhere reflects the name of appellant either as an Editor of the said magazine or printer and publisher. Since the said magazine is not produced before us, we are unable to appreciate as to in what manner the appellant is related to the contents of the said magazine. In absence thereof, we cannot presume or draw any adverse inference against the appellant. In none of the statements of witnesses nor the confessional statements, there is any reference to even remotely suggest that the appellant was known as 'Kiran' or that Kiran was the husband of Narmadakka (original accused no.1). Rather, it is the other way round.

26 By virtue of sub-section (5) of Section 43D of U.A.P. Act, it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against such person is *prima facie* true or otherwise. Needless to say, the expression “*prima facie* true” encompasses in its ambit, the materials/evidence collated by the investigating officer for the accusation against the concerned accused. On its face it must show the complicity of accused and the commission of the alleged offences. It has to be based on reasonable grounds leading to the belief that the accusation against the accused is *prima-facie* true.

27 We have very closely and meticulously gone through the statements of prosecution witnesses and have also given our findings as to their nature and contents thereof. Totality of the material gathered by the investigation agency *qua* appellant-accused and presented before us does not *prima face* point out the involvement of the appellant-accused in the aforesaid offences. Therefore, in our considered view, the embargo of Section 43(D) of U.A.P. Act is beyond invocation.

28 Admittedly, the appellant is more than 70 years old with severe ailments and restricted mobility and is suffering from cerebral cavernoma, a condition where a cluster of abnormal blood vessels is formed in the brain leading to tremors, seizures, severe headaches and haemorrhages in the brain. He has no criminal antecedents. In these circumstances, continuing to incarcerate the appellant in jail would only endanger his life and health and would be a gross violation of Article 21 of the Constitution of India. Moreover, the trial will take a long time. We have, in detail, considered the evidence on record qua the appellant, the gravity of the charge against the appellant and the period already undergone by him (since 11th June 2019).

29 In this view of the matter, having regard to what is stated aforesaid, we are satisfied that the appellant has made out a case for grant of bail. Hence, we pass the following order :

ORDER

- i) The appeal stands allowed.

- ii) The impugned order dated 20th August 2021 passed by the learned Special Court below Exhibit 56 in NIA Special Case No.06 of 2019 stands quashed and set- aside.
- iii) The appellant-Satyanarayana Rani be released on bail on furnishing a P.R bond in the sum of Rs. 1,00,000/- (Rupees One Lakh Only) with one or two solvent sureties in the like amount to the satisfaction of the learned Judge, NIA Court.
- iv) The appellant shall report to the Office of the NIA., Mumbai Branch, Mumbai, twice every week on Tuesday and Friday, between 10:00 a.m to 12:00 noon, for a period of one month from the date of his release. Thereafter, the appellant shall report the said Office on every Tuesday between 10:00 a.m to 12:00 noon for the next two months. Thereafter, the appellant shall report to the said Office on first Tuesday of every month between 10:00 a.m to 12:00 noon, till conclusion of the trial.

- v) The appellant shall attend the NIA Court on every date of the proceeding, unless exempted.
- vi) The appellant shall not leave the jurisdiction of the NIA Court, till the conclusion of the trial, without the prior permission of the NIA Court.
- vii) The appellant shall surrender his passport, if any (if not already surrendered). If the appellant does not hold the passport, he shall file an affidavit to that effect before the NIA Court.
- viii) The appellant shall not, either himself or through any other person, tamper with the prosecution evidence and give threats or inducement to any of prosecution witnesses.
- ix) The appellant shall not indulge in any activities similar to the activities on the basis of which the appellant stands prosecuted.

- x) The appellant shall not try to establish communication with the co-accused or any other person involved directly or indirectly in similar activities, through any mode of communication.
- xi) The appellant shall co-operate in expeditious disposal of the trial and in case delay is caused due to him, then his bail would be liable to be cancelled.
- xii) In the event, the appellant violates any of the aforesaid conditions, the relief of bail granted by this Court will be liable to be cancelled.
- xiii) After release of appellant on bail, he shall file undertaking within two weeks before the NIA Court stating therein, that he will strictly abide by the conditions No. (iv) to (x) mentioned hereinabove.

(V. G. BISHT, J.)

(REVATI MOHITE DERE, J.)

LATER ON :

Learned special public prosecutor requests for stay of the order. Request considered and rejected.

(V. G. BISHT, J.)

(REVATI MOHITE DERE, J.)