

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-405-2020(O&M)

Order Reserved on: 03.03.2022

Order Pronounced on: 15.03.2022

Jagtar Singh Johal alias Jaggi

..... Appellant

versus

National Investigating Agency

..... Respondent

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr.Baldev Singh Badhran, Advocate and
Ms.Arshdeep Kaur, Advocate
for the appellant.

Mr.S.S.Sandhu, Advocate for NIA.

TEJINDER SINGH DHINDSA, J.

The instant appeal filed under Section 21(4) of the National Investigation Agency Act, 2008 is directed against the order dated 24.06.2020 passed by the Special Judge, NIA, SAS Nagar, Mohali in terms of which the bail application of the appellant in RC No. 24/2017/NIA/DLI dated 10.12.2017, FIR No.27/2016, Police Station Basti Jodhewal, Ludhiana, under Sections 307/34, 120-B of the IPC, Sections 25/27 of the Arms Act, Sections 16, 17, 18, 18-A, 18-B, 20, 21 and 23 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter to be referred to as the '1967 Act' for short), Police Station NIA, New Delhi, has been dismissed.

Operative part of the impugned order declining bail to the appellant reads as under:-

“ *On perusal of the record it has been found that prima*

facie there is sufficient evidence against the applicant/accused Jagtar Singh Johal @ Jaggi to establish his involvement in the conspiracy of targeted killings/attempted killings (including instant incident of attempted killing of Amit Arora) of persons that took place in the State of Punjab during the period 2016-17. It has also come on record that funds facilitated by the applicant/accused Jagtar Singh Johal @ Jaggi was handed over to accused Hardeep Singh @ Shera who along with Ramandeep Singh @ Bagga used that funds for carrying out eight incidents of targeted killings/attempted killings (including this incident of attempt to killing of Amit Arora). Thus, in this way, it has been established that Jagtar Singh Johal @ Jaggi has conspired, abetted, funded and facilitated the incident of instant terrorist act. Thus, from the perusal of record, this court is of the considered opinion that there is sufficient grounds for believing that accusation against the applicant/accused is prima facie true. Still further in case the applicant is granted bail, he may threatened or influence the witnesses of the instant case and hamper the trial of the instant case. Thus, keeping in view the serious nature of allegations, this Court does not deem it fit to grant the concession of bail to the applicant/accused Jagtar Singh Johal @ Jaggi. As such, the bail application filed by the applicant/accused Jagtar Singh Johal @ Jaggi is hereby dismissed. Papers be attached with the main file.”

Counsel for the appellant contends that it is a case of false implication by the NIA and Punjab police. Multiple FIRs have been registered in the State of Punjab in which appellant was not even named and no incriminating material having been found against him during the course of investigation. For ready reference the particulars as also status of all the FIRs have been detailed in the grounds of appeal and are as follows:-

“(i) *FIR No. 63 Dated 26-06-2017, U/S 25 Arms Act, 17, 18, 20 of UA (P) Act, PS Bajakhana Faridkot, **Discharged** on 24-07-2019 by the court of Sh. Rakesh Kumar, Additional Sessions Judge, Faridkot.*

(ii) *FIR No.193 Dated 17-12-2016, U/S 25 Arms Act, 17, 18, 19, 20 Unlawful Activities (P) Act PS Bagha Purana, Moga. **Pending** in the Court of Ms. Anjana, ASJ, Moga for **Prosecution Evidence**.*

(iii) *RC-24/2017/NIA/DLI of 2017, FIR No. 27 Dated 04-02-2016, U/S 307/34 IPC, 25 Arms Act, 10, 11, 13, 16 UA (P) Act, PS Jodhewal, Ludhiana. **Pending** in the court of Sh. Karunesh Kumar, Special NIA Court Punjab at SAS Nagar Mohali for **consideration on Charge (Present Case)**.*

(iv) *RC-7/2019/NIA/DLI of 2019: RC-10 (S)/2016/SCU.V/SC-II/New Delhi, Dated: 07-09-2016, FIR No.113 Dated 07-08-2016, U/S 302/34 IPC, 25 Arms Act, 10, 11, 13, 16 UA (P) Act, PS Div. No. 4, Jalandhar, **Pending** in the court of Sh. Karunesh Kumar, Special NIA Court Punjab at SAS Nagar Mohali for **consideration on Charge**.*

(v) *RC-18/2017/NIA/DLI of 2017, FIR No.442 Dated 17-10-*

*2017 U/S 302/34 IPC, 25 Arms Act, 10, 12, 13 UA (P) Act, PS Salem Tabri, Ludhiana. **Pending** in the court of Sh. Praveen Kumar, Special NIA Court at Patiala House, New Delhi for Compliance of Section 207 Cr.P.C.*

*(vi) RC-22/2017/NIA/DLI of 2017, FIR No.218 Dated 15-07-2017, U/S 302/34 IPC, 25 Arms Act, 10, 11, 13, 16 UA (P) Act, PS Salem Tabri, Ludhiana. **Pending** in the court of Sh. Praveen Kumar, Special NIA Court at Patiala House, New Delhi for Compliance of Section 207 Cr.P.C.*

*(vii) RC-23/2017/NIA/DLI of 2017, FIR No.13 Dated 26-02-2017, U/S 302/34 IPC, 25 Arms Act, 10, 11, 13 UA (P) Act, PS Maloud, Polce Distt. Khanna. **Pending** in the court of Sh. Praveen Kumar, Special NIA Court at Patiala House, New Delhi for Compliance of Section 207 Cr.P.C.*

*(viii) RC-25/2017/NIA/DLI of 2017, FIR No.119 Dated 24-04-2016, U/S 302/34 IPC, 25 Arms Act, 10, 11, 13 UA (P) Act, PS City Khanna. **Pending** in the court of Sh. Praveen Kumar, Special NIA Court at Patiala House, New Delhi for Compliance of Section 207 Cr.P.C.*

*(ix) RC-26/2017/NIA/DLI of 2017, FIR No. 7 Dated 18-01-2016 U/S 307 IPC, 25 Arms Act, 10, 11, 13, 16 UA (P) Act, PS Div. No. 2, Ludhiana. **Pending** in the court of Sh. Praveen Kumar, Special NIA Court at Patiala House, New Delhi for Compliance of Section 207 Cr.P.C.*

(x) RC-27/2017/NIA/DLI of 2017, FIR No. 6 Dated 15-01-2017, U/S 302/34 IPC, 25 Arms Act, 10, 11, 13, 16 UA (P) Act,

*PS Div. No. 8, Ludhiana. **Pending** in the court of Sh. Praveen Kumar, Special NIA Court at Patiala House, New Delhi for Compliance of Section 207 Cr.P.C.”*

Giving out a backdrop to the matter, counsel submits that one Amit Arora had got recorded his statement before the police that on 03.02.2016 two unknown persons had fired upon him at about 20:30 hrs. while he was at Jodhewal road along with his servant Mani and gunman Om Parkash. Pursuant thereto FIR No.27 dated 04.02.2016, under Section 307/34 IPC and Section 25 of the Arms Act, 1959 was registered at Police Station Basti Jodhewal, Ludhiana, Punjab against unknown persons. Investigation was carried out by the Punjab police and a final report under Section 173 Cr.P.C. was prepared. As per final report FIR had been lodged falsely by complainant Amit Arora, Youth President of Shiv Sena, Punjab. His servant Mani and gunman Om Parkash were arrested along with complainant by the police and they had confessed that the attack had been planned and a friendly iron rod blow had been given by servant Mani to create false evidence. On the basis of such investigation final report under Sections 420, 417, 177, 193, 120-B, 34 IPC and Section 25 of the Arms Act, 1959 was prepared by the police against Amit Arora and his accomplices. Thereafter based on a reference from the Government of Punjab in accordance with Section 6(2) of the National Investigation Act, 2008 and Ministry of Home Affairs' order dated 08.12.2017, the case was transferred to NIA whereby NIA re-registered the case bearing FIR No.24/2017/NIA/DLI dated 10.12.2017, under Sections 120-B, 307 IPC, Sections 16, 17, 18, 18-A, 18-B, 20, 21 and 23 of the 1967 Act and Sections 25 and 27 of the Arms Act, 1959. A final report/chargesheet dated

22.02.2019 already stands presented before the Special Judge, NIA Court, Punjab at SAS Nagar, Mohali against the appellant herein and others,. Copy of such chargesheet stands appended as Annexure P-3 along with the appeal.

Counsel has argued that the appellant is entitled to bail inasmuch as in the chargesheet at Annexure P-3 the only allegation is that the appellant had delivered 3000 British Pounds to Harminder Singh @ Mintu (since deceased) and these very allegations are already part of FIR No. 193 of 2016 registered at Police Station Bagha Purana, Moga under Section 25 of the Arms Act, 1959 and Sections 17, 18, 19, 20 of the 1967 Act. Further asserted that the appellant had been arrested in afore-noticed FIR No.193 of 2016 on the basis of disclosure statement made by one Taljit Singh Jimmy who in turn had been implicated in the said case on the basis of disclosure statement of one Tarlok Singh Laddi. It is submitted that both Taljit Singh Jimmy and Tarlok Singh Laddi have been discharged by the NIA in the present case. That apart counsel has adverted to order dated 06.11.2020 passed by this Court in CRM-M-32730-2020 whereby the petitioner (appellant herein) has been granted concession of bail in FIR No.193 dated 17.12.2016. Counsel emphasises that the NIA has solely relied upon the alleged disclosure statement made in FIR No. 193 of 2016 at Moga insofar as present case is concerned. Counsel further argues that the impugned order passed by the Special Judge rejecting the bail plea of the appellant is based on surmises and conjectures and no material/document/evidence has been adverted to on the basis of which a finding has been returned against him. Still further contended that NIA has cited 197 witnesses to be examined and 182 documents to be exhibited during trial and as such the whole process would likely to take considerable

time to conclude whereas the appellant has faced incarceration since 04.11.2017.

Per contra Mr.S.S.Sandhu, Advocate, Special Prosecutor for NIA has opposed the prayer for bail. A preliminary objection has been raised stating that under Section 21(5) of the NIA Act, 2008 a limitation period of 30 days is provided for filing the appeal against the judgment of the NIA Special Court and such period commences to run from the date of the judgment. In the case in hand, the bail application was dismissed by the NIA Special Court, Mohali on 24.06.2020 and the instant appeal has been filed on 21.12.2020 i.e. after a period of 180 days. Mr. Sandhu contends that the appeal is time barred by 150 days.

On merits, learned counsel for NIA submits that during the course of investigation in FIR No.27 of 2016 registered at Police Station Basti Jodhewal, Ludhiana, it came to light that a number of incidents have happened in the State of Punjab in the years 2016-17 in which people belonging to a religious organisation were being targeted/attacked/killed. To unearth the truth behind these incidents which were viewed as a larger conspiracy to destabilise public order in Punjab, the Government of India, Ministry of Home Affairs in exercise of powers conferred upon it under Section 6(4) read with Section 8 of the National Investigation Act, 2008 decided that all the cases will be investigated by NIA. Pursuant to such decision the Ministry of Home Affairs vide order dated 08.12.2017, directed NIA to take up the investigation of FIR No.27/2016. Accordingly NIA re-registered the case RC No. 24/2017/NIA/DLI dated 10.12.2017 at Police Station NIA, Delhi under Section 307 read with Section 34 IPC, Sections 10, 11, 13 and 16 of the 1967 Act and Section 25 of the Arms Act. After

conducting investigation, a supplementary chargesheet has been filed in the Court of Special Judge, NIA, Mohali on 22.02.2019 against eight accused persons namely Hardeep Singh @ Shera @ Pehalwan (A-1), Ramandeep Singh @ Canadian @ Bagga (A-2), Dharminder Singh @ Guguni (A-3), Anil Kumar @ Kala (A-4), Jagtar Singh Johal @ Jagtar Singh Johar @ Jaggi @ Johar (A-6) (present appellant), Harmeet Singh @ PhD @ Doctor (A-14), Gurjinder Singh @ Shastri (A-15), Gursharanbir Singh (A-16), under Sections 120-B, 307 of the IPC, Sections 16, 17, 18, 18-A, 18-B, 20, 21 and 23 of the 1967 Act (as amended) and Sections 25, 27 of the Arms Act, 1959.

Mr. Sandhu, learned counsel for NIA has vehemently stressed that during investigation it has been found that the appellant used to write a publication in the name of 'Singh Surme' related to 1984 riots. He along with Gursharanbir Singh (A-16) wrote a book on Khalistan Liberation Force (KLF) in the years 2013-14. Appellant had handed over 3000 British Pounds to Harinder Singh @ Mintu in France. Such money was given towards executing a larger conspiracy and for recruitment and motivating like minded persons to join Khalistan Liberation Force – a terrorist gang. Further investigation established that co-accused Hardeep Singh @ Shera along with Ramandeep Singh had carried out a series of targeted killings/attempted killings during the period of 2016-17 in Ludhiana and Jalandhar districts of Punjab with the motive of destabilising the law and order situation of Punjab. It is submitted that the appellant is a close associate of co-accused Harmeet Singh @ PhD and Gursharanbir Singh (A-16), the master mind of conspiracy and as such had played a vital role in the planning and execution of the larger conspiracy. To buttress such

submission Mr Sandhu had also produced before us in a sealed cover the statements recorded of certain protected witnesses. We have perused the same.

Mr. Sandhu has also opposed the prayer for bail citing the statutory rigors of Section 43-D (5) of the 1967 Act.

We have heard counsel for the parties at length.

The objection as regards the instant appeal being time barred is without merit. In this regard the order/clarification issued by the Registrar General of this Court dated 09.07.2020 at Annexure P-4 would be relevant and the same is in the following terms:-

“ORDER/CLARIFICATION

Re : Situation arising due to outbreak of the novel Coronavirus (COVID-19).

It is clarified for information of the Learned Advocates, Litigants and General Public that the limitation for filing the cases/applications before the Hon'ble High Court and the Subordinate Courts stand extended w.e.f. 15.03.2020 till further orders, in pursuant to Order dated 23.03.2020 and 06.05.2020 passed in Suo Moto Writ Petition (Civil) No. 3/2020 which is pending before the Hon'ble Supreme Court and it will be subject to modification of orders by the Hon'ble Supreme Court, if any.

BY ORDER OF HON'BLE THE CHIEF JUSTICE

*Sd/-
(Sanjiv Berry)
Registrar General
09.07.2020”*

In the light of such clarification the objection raised by learned counsel for NIA as regards delay is overruled.

Section 43-D(5) of the 1967 Act reads as under:-

“ Modified application of certain provisions of the Code.--

5. *Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:*

Provided that such accused person shall not be released on bail or on his own bond, if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.”

Undoubtedly the bail proceedings under a special enactment will have to be viewed as distinct and the Courts are duty bound to refuse bail where the suspect is *prima facie* believed to be guilty. We are conscious that the charges levelled against the appellant are grave and in the nature of making an attempt to destabilise public order in the State of Punjab. Be that as it may, we are refraining from making any observations on merits lest it may prejudice the trial. In the same vein we are of the view that Constitutional Courts ought to exercise their power to grant bail notwithstanding the limitations specified under special enactments keeping in view the right of an accused to speedy trial and access to justice.

In the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 which also have rigorous conditions for grant of bail, the Apex Court in a number of cases has enlarged the accused on bail on account of the extended period of incarceration and with little possibility of an early completion of trial. A reference in this regard may be made to the decisions of the Apex Court in **Paramjit Singh vs. State (NCT of Delhi) (1999) 9 SCC 252**, **Babba @ Shankar Raghuman Rohida vs. State of Maharashtra (2005) 11 SCC 569** and **Umar Mia @ Mamu Mia vs. State of Gujarat (2017) 2 SCC 731**.

The Apex Court in **Union of India vs. K.A.Najeeb, (2021) 3 SCC 713** had considered the issue of a long incarceration against the backdrop of Section 43-D(5) of the 1967 Act and had observed as follows:-

“18. It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA perse does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions

like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

19. *Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.*

20. *Yet another reason which persuades us to enlarge the Respondent on bail is that Section 43D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS. Unlike the NDPS where the competent Court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under the UAPA. Instead, Section 43D (5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the wellsettled*

considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc.”

Adverting to the facts of the present case it has gone uncontroverted that the appellant has been charged under Sections 16,17,18 of the 1967 Act and Section 120-B of the IPC but not under Section 307 IPC. Appellant has suffered incarceration for a period of almost five years. It has gone uncontroverted that the prosecution has cited 197 witnesses and the trial is yet to commence. We are aware that even a sentence of life imprisonment can be imposed for the offence with which the appellant has been charged under the 1967 Act and the IPC but we cannot ignore the fact that the sentence could range between 5 years to imprisonment for life. Concededly appellant has already undergone incarceration of almost 5 years with the trial yet to commence.

Under such peculiar circumstances and keeping in view the dictum laid down by the Apex Court in **Union of India vs. K.A.Najeeb (supra)** we are inclined to accept the instant appeal.

For the reasons recorded above the impugned order dated 24.06.2020 passed by the Special Judge, NIA, SAS Nagar, Mohali is set aside. Appellant is held entitled to regular bail during pendency of the trial.

Appellant be produced before the Special Judge, NIA, SAS Nagar, Mohali within a period of 10 days from today, to enable him to seek bail by furnishing bail bonds/surety bonds. The Special Judge shall also put a condition that the appellant shall report to the Police Station concerned after every 15 days i.e. on the 1st and 15th of the month before the concerned

SHO to ensure that his whereabouts are always ascertainable.

Instant appeal stands allowed accordingly.

(TEJINDER SINGH DHINDSA)
JUDGE

(LALIT BATRA)
JUDGE

15.03.2022
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No