

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

1.

CRA-D-524-2023 (O&M)
Date of Decision: May 10, 2023

Harpreet Singh @ Happy Malaysia Appellant

VERSUS

National Investigation Agency and another Respondents

2.

CRA-D-503-2023 (O&M)

Harpreet Singh @ Happy Malaysia Appellant

VERSUS

National Investigation Agency and another Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Karnail Singh Ahhi, Advocate and
Mr. Kunwar Rajan, Advocate for the appellant.

LISA GILL, J.

1. This order shall dispose of CRA-D-503-2023 and CRA-D-524-2023.

2. At request and with consent of learned counsel for the appellant, both the above mentioned appeals i.e. CRA-D-503-2023 and

CRA-D-524-2023 are taken up together for hearing as the controversy in said appeals is intrinsically linked with each other.

3. CRA-D-503-2023 has been filed challenging decision dated 04.03.2023 passed by the learned Special Judge, NIA, Punjab, SAS Nagar, Mohali (for short – ‘Special Judge’) in NIA case No. RC-01/2022/NIA/DLI dated 13.02.2022 arising out of FIR No. 446/2021 dated 23.12.2021 under Sections 302, 307, 124A, 120B IPC; Sections 13, 15, 16 and 18 of The Unlawful Activities Prevention Act (for short – ‘the Act’); Sections 3, 4, 5 of Explosives Act and Section 3 and 4 of Prevention of Damage to Public Property Act registered at Police Station Division No. 5, District Police Commissionerate Ludhiana, Punjab, whereby appellant’s application seeking concession of bail under Section 167 (2) of Cr.P.C. has been dismissed as infructuous on account of period of investigation being extended vide order dated 03.03.2023.

CRA-D-524-2023 has been filed by the appellant challenging decision dated 03.03.2023 passed by the learned Special Judge whereby period for investigation has been extended from 90 days to 150 days.

4. Brief facts necessary for adjudication of the matter which have been culled out from CRA-D-524-2023 for the sake of convenience are that RC-01/2022/NIA/DLI dated 13.02.2022 arising out of FIR No. 446/2021 dated 23.12.2021 under Sections 302, 307, 124A, 120B IPC; Sections 13, 15, 16 and 18 of The Unlawful Activities Prevention Act; Sections 3, 4, 5 of Explosives Act and Section 3 and 4 of Prevention of Damage to Public Property Act registered at Police Station Division No. 5, District Police Commissionerate Ludhiana, Punjab was registered on the statement of ASI

Sukhpal, Incharge Police Post, Court Complex Ludhiana in respect to the explosion, which took place in the washroom located on second floor of District Court Complex, Ludhiana. As a result of the explosion, one person died and six were injured with extensive damage being caused to the washroom wall adjoining record room of the Court and windows etc. It is stated that bomb blast was carried out by some anti-national elements with intention to disturb law and order, to damage Government property, to put lives of citizens at risk and to unnecessarily create panic in public. It was discovered during investigation that Gagandeep Singh son of Amarjeet Singh resident of Ludhiana, who was found dead at the spot, was the handler of bomb. He was arrayed as accused in the matter. Charge sheet was filed on 07.01.2023 against five persons namely Gagandeep Singh, Surmukh Singh @ Samu, Dilbagh Singh @ Baggo, Rajanpreet Singh and Zulfikar @ Pehalwan. Subsequently, present appellant - Harpreet Singh @ Happy Malaysia, who is stated to be one of the main conspirators, was arrested on 01.12.2022 after his deportation from Malaysia. Appellant is stated to have coordinated delivery of IED to Indian associates from Pakistan.

5. In terms of Section 43D of the Act, period of 90 days for completion of investigation were coming to an end on 01.03.2023. Application dated 22.02.2023 submitted by the Inspector of Police/CIO, NIA, Chandigarh was forwarded by the Public Prosecutor, NIA, Chandigarh seeking extension of time for investigation to 180 days.

6. Appellant filed application dated 03.03.2023 seeking bail (default bail) on the ground that period of 90 days having come to end, he is entitled to the said concession. Learned Special Judge vide decision dated

03.03.2023 extended the period for completion of investigation from 90 days to 150 days i.e. till 30.04.2023 while finding sufficient grounds for the same. Consequently, as period of investigation stood extended to 30.04.2023 on application dated 02.03.2023, application seeking bail under Section 167 (2) Cr.P.C. was dismissed as infructuous by the learned Special Judge on 04.03.2023, challenge to which has been raised by the appellant in CRA-D-503-2023. Aggrieved therefrom, appellant has filed the above said two appeals challenging both order dated 03.03.2023 whereby period for investigation has been extended as well as dismissal of his application seeking bail under Section 167 (2) Cr.P.C.

7. Learned counsel for the appellant vehemently argued that learned Special Judge has grossly erred on facts and in law in allowing extension in the period for completion of investigation. While referring to Section 43D of the Act, it is urged that first and foremost, report should have been submitted by the Public Prosecutor and that this report should indicate the progress of investigation and categoric reasons calling for detention of the appellant beyond the period of 90 days. Apart from arguing that report of Public Prosecutor was never supplied to the appellant, it is contended that impugned order dated 03.03.2023 does not indicate application of independent mind by Public Prosecutor while submitting the report. Moreover, material should be placed on record to indicate that the agency could not complete investigation within the stipulated period of 90 days. Moreover, satisfaction of the Court qua the reasons put forth, which is required in terms of the specific provisions of law, is not forthcoming.

Furthermore, learned Special Court has observed that the investigation in

this case is lengthy while extending the period for investigation. However, the word 'lengthy', it is asserted does not show that investigation was not possible to be conducted within the period of 90 days.

8. Learned counsel also argued that investigating agency is in fact not making any efforts to investigate the matter which is at a stand still. Reference in this regard is made to application dated 02.03.2023 seeking police custody of the appellant for 10 days and thereafter subsequent applications for extension of police custody (Annexures P1, P3 and P5) and ultimately application dated 19.12.2022 seeking judicial custody of the appellant. It is further submitted that appellant is in judicial custody, therefore, it is apparent that his further custodial interrogation is not required for investigation of the matter. It is, thus, prayed that impugned orders dated 03.03.2023 (in CRA-D-524-2023) and 04.03.2023 (in CRA-D-503-2023) be set aside and consequently, appellant be granted bail under Section 167 (2) Cr.P.C.

9. We have heard learned counsel for the appellant and have gone through the file.

10. It is matter of record that the appellant is an accused in RC-01/2022/NIA/DLI dated 13.02.2022 arising out of FIR No. 446/2021 dated 23.12.2021. Allegation against the appellant is that he was one of the main conspirators in the incident of bomb blast, which took place at the District Court complex, Ludhiana on 23.12.2021. Appellant was arrested subsequently on 01.12.2022 after his deportation from Malaysia. Three mobile phones, handsets were recovered from his possession and data extracted through CFSL, Chandigarh. It is the case of the investigating

agency that, “retrieved mobile data of the appellant is voluminous data consisting of 116225 (One Lac, Sixteen thousand Two hundred and Twenty five) PDF file, 1,18,814 (one lac Eighteen Thousand Eight hundred and Fourteen) call logs, contacts - 10874 consisting of 1363 Indian contacts, Data of two WhatsApp accounts (+60183209027 and +60163190435)| total 3907 messages, GPS locations- 51, Audio's 35798, Locations- 796, Images 138534 Network usages - 44205, Documents - 3828, Passwords - 3002, Recordings- 141 ,Search items - 139, User accounts- 268, Web history - 15156, Videos - 1000 including 70 Pakistani mobile number in contact list, which are being verified”. It is categorically stated in application dated 22.02.2023 seeking extension of period of investigation that analysis of such voluminous data is time consuming and was in progress. Moreover, financial investigation with respect to the appellant was in progress wherein number of people are required to be examined. It is further stated that appellant revealed number of important facts, which are yet to be verified, which is again a time consuming process. Several important witnesses sometimes do not want to depose against accused persons due to fear and threat perception to their life and liberty in respect to which detail investigation, is to be carried out. Suspicious financial transactions were being looked into and verified from different banks and other independent witnesses. On account of the above, extension in the period of investigation from 90 days to 180 days was sought. Perusal of impugned order dated 03.03.2023 reveals that all facts and circumstances of the matter have been duly considered by the learned Special Judge before passing the said order. We find no ground for

setting aside well reasoned order dated 03.03.2023, for reasons as discussed in the following paras.

11. At this juncture, it is relevant to advert to Section 43D of the Act, which reads as under:-

“ Section 43D. Modified application of certain provisions of the Code.-- (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),--

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:--

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the

reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that--

(a) the reference in sub-section (1) thereof

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government.";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to 'the State Government' shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(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*.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.”

12. It is not denied by learned counsel for the appellant that application seeking extension of time for investigation submitted by Inspector of Police/CIO, NIA, Chandigarh was duly forwarded by Public Prosecutor, NIA, Chandigarh. Question of supply of copy of the same to the accused at this stage of investigation does not arise.

13. Learned Special Judge while referring to the report of the Public Prosecutor has specially observed that, “The other main ground disclosed in the report of the Public Prosecutor for the CBI is that entire chain of supply of IED from its original to receiving hands, identification of the order persons/entities and the havala operators involved in channelizing the terror funding/drug, are yet to be established. The report further shows that the investigation of this case is spread to several areas of India i.e. Bihar, J & K, Tamilnadu, Himachal Pradesh, Rajasthan, Maharashtra, parts of Punjab and other areas and due to these reasons, it would not be possible for the CIO of the case to complete the investigation within the period of 90 days”.

14. The difficulty in completion of investigation is duly reflected. It is categorically observed by the learned Special Judge while referring to the report of Public Prosecutor that investigation of the case is spread to several

far flung parts of India and that the entire chain and sequence involved in this case, was yet to be established.

15. It is apparent that there has been due application of mind by the Public Prosecutor before forwarding the application in question.

16. We, thus, do not find any merit in the argument raised by learned counsel for the appellant that application of mind by Public Prosecutor before forwarding the application seeking extension of time for investigation, is not apparent on record or that Public Prosecutor did not apply his independent mind before forwarding the report. Reliance by learned counsel for the appellant on the judgment of Hon'ble Supreme Court in **Hitendra Vishnu Thakur versus State of Maharashtra 1994 (4) SCC 602** is of no avail to him as there is not an iota of material on record to indicate that Public Prosecutor in this case did not satisfy himself about the progress of investigation before forwarding the application.

17. The matter at hand pertains to a grave incident of an explosion taking place on 23.12.2021 in the washroom located in front of Court No. 14 at the second floor of District Court Complex, Ludhiana. Allegation against the appellant is that he coordinated and facilitated delivery of IED to Indian associates from Pakistan. Apart from damage to life and property, needless to say such incidents create fear and unrest in the populace. In the given facts and circumstances, it cannot be said that the investigating agency is not taking necessary steps for carrying out investigation. Appellant himself was arrested on 01.12.2022 only after his deportation from Malaysia.

18. Learned counsel for the appellant is unable to point out any illegality, infirmity or irregularity in decision dated 03.03.2023 passed by

learned Special Court (in CRA-D-524-2023) which calls for interference by this Court. Resultantly, no ground is made out for interference in decision dated 04.03.2023 (in CRA-D-503-2023) as well, wherein appellant is aggrieved of dismissal of his application seeking bail under Section 167 (2) Cr.P.C. as infructuous.

19. No other argument has been addressed.

20. Both the appeals i.e. CRA-D-503-2023 and CRA-D-524-2023 are, accordingly, dismissed.

(LISA GILL)
JUDGE

May 10, 2023
Rts

(RITU TAGORE)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No