

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

CRA-D-327-2021

Date of Decision:- **27.04.2023**

Balvir Singh @ Binda

....Appellant

vs.

National Investigation Agency & ors.

....Respondents

**CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. G.S. Bhatia, Advocate
for the appellant

Mr. S.S. Sandhu, Special Prosecutor
for the respondent-NIA.

Ritu Bahri, J.

This appeal is against the order dated 20.04.2021 passed by the learned Special Judge, NIA, Mohali, Punjab (herein after to be referred as 'the Court below'), whereby the second regular bail application of the appellant, Balvir Singh @ Binda, filed under Section 437 Cr.P.C in case No. RC. 21/2019/NIA/DLI dated 1.10.2019 arising out of F.I.R No. 13 dated 22.09.2019, registered at P.S. SSCO, Amritsar under Section 25 of the Arms Act, 1959, Section 3,4 and 5 of Explosive Substantive Act, 1908, Section 15, 17, 18, 18B, 20 of Prevention of Unlawful Activities Act 1967 (Amended 2012) Section 489-A, 489-B, 489-C, 120-B IPC and Section 52-A of the Prisons Act, was dismissed.

Brief facts of the case are that a secret information was received at Police Station Special State Operations Cell (SSOC), Punjab that Gurmeet Singh @ Bagga, presently residing in Germany is in touch with Khalistani leaders in an

endeavour to revive terrorism in Punjab and heavy funding is being done for this purpose from foreign countries. One Maan Singh, presently lodged in Central Jail, Amritsar got in touch with aforesaid Gurmeet Singh @ Bagga through mobile and social media, while in jail. Said Maan Singh motivated another inmate Akashdeep Singh, to join terrorism and got him in contact with Gurmeet Singh @ Bagga, who in connivance with Ranjeet Singh @ Neeta, Pakistan based chief of Khalistan Zindabad Force, smuggled a huge consignment of arms, ammunitions, explosives and fake currency from Pakistan into India with the help of Maan Singh and the same was received by Akashdeep Singh and his associates namely Balwant Singh, Balvir Singh (present applicant), Harbhajan Singh, Shubdeep Singh and their unknown associates. These persons were in preparation to execute a huge terrorist incident in Punjab so as to create an atmosphere of disharmony, communal tension and instability in Punjab and other States of India. Accordingly, FIR No.0013 dated 22.09.2019 was registered at Police Station Special Operation Cell, Amritsar, Punjab under Sections 489-A, 489 B, 489 C and 120-B IPC, Section 25 of the Arms Act, Sections 3, 4 & 5 of Explosive Substances Act, 1908 and Section 52-A of the Prisons Act 1894. Subsequently, four arrested accused persons namely Akashdeep Singh, Balwant Singh, Balvir Singh (present applicant) and Harbhajan Singh were arrested along with consignment of arms, ammunition and explosives at the outskirts of town Chohla Sahib, Tarn Taran. Thereafter, the Central Government, Ministry of Home Affairs, New Delhi vide order dated 30.09.2019 entrusted the investigation of this case to the NIA, the NIA re-registered the case No.RC-21/2019/NIA/DLI dated 01.10.2019.

The present applicant filed second bail application before the Court below on the ground that the applicant has been falsely implicated in the present

case and further he is suffering from serious heart problem which is incurable dilation of heart chambers and defect in one of the heart valve and his health is deteriorating day by day in the jail.

But, vide order dated 20.04.2021, the application was dismissed on the ground that similar plea was raised by the applicant before High Court, wherein it was observed that as per report received from the Senior Medical Officer, Central Jail, Amritsar, the patient (Applicant) routinely visited the jail OPD and was also referred to Guru Nanak Hospital, Amritsar, where he was examined by the Cardiologist and Medicines were prescribed to him. It has further been mentioned that the applicant is not suffering from any serious ailment. Hence the present appeal

This Court on 06.12.2021 passed the following order:-

“Reply filed by the Superintendent Central Jail, Patiala, dated 04.12.2021. Medical Report of the Medical Officer of Central Jail, Patiala, (Annexure R-1), dated 04.12.2021 with custody certificate of Balvir Singh (Annexure R-2) dated 04.12.2021 are taken on record. As per the Medical Report the appellant has been taken to Rajindra Hospital Patiala to Medicine And Cardiology Department on 11.10.2021, 14.10.2021, 18.10.2021 and got various tests done and treatment advised is being provided at daily basis at jail as per need. He was again taken next to the Mata Kaushliya Hospital, Patiala, on 01.12.2021 where USG Inguinal Region and various other blood tests and Chest X-ray were advised.

The matter is being adjourned to enable the counsel for the respondent-State to file fresh medical status report.

Adjourned to 16.03.2022.”

Thereafter, learned counsel for the applicant-appellant has filed an application seeking placing on record copy of report under Section 173 (2) Cr.P.C dated 18.03.2020 and copy of order dated 27.08.2021 (Annexure P-8 and P-9). The same was allowed on 25.08.2022.

Learned counsel for the applicant-appellant while referring to order dated 27.08.2021 submits that the charges against the present applicant has been framed under Section 120-B read with Section 489-B, 489-C of IPC, Section 4 & 5 of Explosive Substances Act and Sections 25 (1A), 25 (1AA), 25 (1B) of the Arms Act. The applicant can be punished maximum for a period of life under Section 25(AA) of the Arms Act.

Learned counsel for the appellant is relying upon judgment of Hon’ble the Supreme Court of India in a case of ***CBI vs. P.S. Jayaprakash and another, 2023 (1) SCC 314*** wherein Hon’ble the Supreme Court allowed the appeals and all anticipatory bail applications were remitted to the High Court to decide the same afresh in accordance with law and on their own merits. It has been observed that the High Court has neither considered the allegations against the respective accused nor the role played by them nor the position held by them at the time of registering the F.I.R in the year 1994 nor the role played by them during the investigation of Crime. The High Court has also not taken note of the recommendations made by the Committee.

Reference has further been made to another judgment of Hon’ble the Supreme Court in a case of ***Ashim @ Asim Kumar Haranath Bhattacharya @ Asim Harinath Bhattacharya @ Aseem Kumar Bhattacharya vs. NIA, passed in SLP (CrI) Nos. 6858-2011, decided on 01.12.2021.***

Heard learned counsel for the parties at length.

The judgment cited by learned counsel for the appellant i.e **P.S. Jayaprakash case (supra)**, will not be applicable to the facts of the present case, as in that case, firstly it was a case of anticipatory bail granted to the respondents. The appeals were allowed and the matters were remitted back to the High Court to consider the anticipatory bail applications afresh and thereafter to pass appropriate orders in accordance with law and on their own merits. The High Court was directed to consider individual role of each accused and nature of allegations against each of them..

The next judgment cited by learned counsel for the appellant i.e **Ashim's case (supra)** is also not applicable to the facts of the present case, as this was a case where Hon'ble the Supreme Court was informed that only one such Special Court has been designated by the State of West Bengal to try cases under the Act, 2008. It was found that hearing is taking only one day in a month. Charges came to be file in the year 2012 and charges were framed in June 2019. The appellant was 74 years of age.

In the facts of the present case, as per reply dated 02.09.2021 filed by the respondent, earlier also the bail application filed by the appellant was dismissed by this Court on 05.08.2020 with the following observations:-

"In the present case, the appellant was arrested on 22.09.2019 alongwith 0.30 bore pistol, magazine and live ammunition in his possession and it has been established that he was closely associated with the operatives of Khalistan Zindabad Force and arms, ammunition, communication devices and FICN were recovered from the car in which he alongwith co-accused was travelling, which were sent via drones from across the border from Pakistan into the Indian Territory. It is further seen that as per record, the appellant is not suffering from any major ailment. It is further seen that initially FIR No.13 dated 22.9.2019 was registered in Police Station SSOC, Amritsar and thereafter NIA took over the investigation of the case and re-registered it as

case No.RC-21/2019/NIA/DLI dated 01.10.2019 in Police Station NIA, New Delhi.

So far as the grant of bail to the appellant on medical ground is concerned, suffice to say, as per report received from the Senior Medical Officer, Central Jail, Amritsar, the patient (appellant) routinely visited the jail OPD and he was also referred to Guru Nanak Hospital, Amritsar on 20.3.2020, where he was examined by the Cardiologist and Medicine Specialist and some medicines were prescribed to him. It is further mentioned therein that the appellant was not suffering from any serious ailment.

Having regards to the totality of the facts and circumstances aforementioned coupled with the serious nature of allegations levelled against the appellant, we do not deem it fit to grant the concession of regular bail to the appellant.

Dismissed.

Thereafter, again this Court sought reply from the respondent with respect to medical condition of the appellant. But now again as per report received from Medical Officer of Central Jail, Patiala (R-1), the appellant has been taken to hospital and his various tests were conducted. The medical condition of the appellant is not serious.

Now as per charge sheet (P-8), mentioned at page No. 66 of the paper book, the appellant has been charge sheeted under Section 120B r/w 489B/489C of IPC, Sections 4 and 5 of Explosive Substances Act and Sections 25(1A), 25 (1AA), 25 (1)(B)(a) (g) of Arms Act, 1959. Further investigation established that in the year 2017, accused-balwant Singh came to Charan Kamal Gurudwara as its head where the present appellant met him there for the first time and used to do all the work of Gurudwara as instructed by Balwant Singh. On 22.09.2019, as accused were travelling in the Maruti Swift car, they were stopped at a naka. On personal search, .30 bore pistol with magaizine and live ammunition was recovered from him. They were arrested after a huge cache of arms and ammunition was recovered from the dicky of the car.

Now keeping in view the fact that the medical condition of the appellant is not poor, as per medical Report of the Medical Officer of Central Jail, Patiala, (Annexure R-1), dated 04.12.2021 and the fact that he has been in custody for only 03 years, at this stage no case is made out for grant of regular bail to the appellant, keeping in view the nature of allegations as shown to be leveled in the charge sheet (P-8) against the appellant.

The appeal stands dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

27.04.2023

G Arora

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No