

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.270 of 2022

Arising Out of PS. Case No.-4 Year-2018 Thana- NIA District- Patna

1. Paigambar Sheikh @ Abdul Aziz @ Phaim S/o Late Hazrat Ali @ Md Hazarat Sk @ Hazrat Sheikh R/o Village- Kankuria, P.S.- Samshergunj, District- Murshidabad (West Bengal).
2. Ahmad Ali @ Kalu S/o- Late Hussain Ali R/o Village- Ratanpur, P.S.- Samshergunj, District- Murshidabad (West Bengal).
3. Nur Alam Momin S/o- Mansur Momin R/o Village- Kamat Mominpara, Dhulian, P.S.- Samshergunj, District- Murshidabad (West Bengal).

... .. Appellants

Versus

The Union of India (N.I.A) India

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. N.K. Agarwal, Sr. Advocate Mr. Anuj Kumar, Advocate Mr. Wasif Rahman Khan, Advocate Mr. Santosh Kumar Yadav, Advocate
For the NIA	:	Mr. K.N. Singh, Sr. Advocate Mr. Arvind Kumar, Spl PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 25-06-2024

Heard Mr. N.K Agrawal, learned Senior counsel assisted by Mr. Wasif Rahman Khan, learned counsel for the appellants and Mr. Arvind Kumar, learned counsel for the National Investigation Agency (in short N.I.A.). Also perused the records of the learned trial court.

2. This appeal has been preferred under Section 21 (1) of the N.I.A Act, 2008. There are three appellants in this appeal who

are seeking setting aside of the judgment of conviction dated 10.12.2021 and order of sentence dated 17.12.2021 passed by learned Special Judge, N.I.A., Patna in connection with Special Case Number 01 of 2018 arising out of N.I.A. P.S. New Delhi R.C. No. 04 of 2018 which arose out of Bodhgaya P.S. Case No. 34 of 2018 registered for the offences punishable under Sections 120, 121(A), 122, 123 and 153(A) of the Indian Penal Code (in short 'I.P.C.') and Sections 16, 18 and 20 of the Unlawful Activities (Prevention) Act, Sections 14, 17 and 19 of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 as also under Sections 4 and 5 of the Explosive Substances Act, 1908.

Prosecution Story

3. As per the prosecution case, three Improvised Explosive Devices (IEDs) were planted in and around the Bodhgaya Temple Complex. One of the IEDs exploded outside Kalchakra Maidan, Gate No.5 and the Police recovered two live IEDs i.e., one from Gate No.4 of Mahabodhi Temple and another near the Sri Lankan Monastery. The local Police registered FIR against unknown persons and subsequently, by order dated 2nd February, 2018 the Government of India, Ministry of Home Affairs directed the National Investigation Agency to take up the Investigation of this case, accordingly, RC Case No.4 of

2018/NIA/DLI was registered at Police Station New Delhi on 03.02.2018.

4. After investigation of the case, the investigating agency submitted a charge-sheet bearing Number 25 of 2018 against the appellants on 27.09.2018 whereafter, the learned Special Judge took cognizance of the offences on 28.09.2018. It is worth mentioning that although the investigating agency did not find sufficient materials to charge-sheet the appellants for the offence punishable under Section 121 IPC, at the time of framing of charge on 28.03.2019 the learned Special Judge framed the charges under Sections 121(A), 121, 121A/122, 122 and 123 of the IPC. The appellants pleaded not guilty and claimed to be tried.

5. It is not controverted that after framing of charge for about two years six months approximately, the prosecution did not examine a single witness. On 22.11.2021, learned counsel for the appellants filed a petition on behalf of appellant nos. 2 and 3 with other four accused and on 10.12.2021, a petition was filed on behalf of appellant no. 1 pleading guilty.

6. The learned Special Court N.I.A. has convicted the appellants and others on the basis of their petition pleading guilty. After conviction of the appellants, they have been sentenced to undergo imprisonment for life and further sentenced to pay a fine of

Rs. 5,000/- and in default, simple imprisonment for one month, for the offence punishable under Section 121 IPC.

They have been sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 5,000/- and in default, simple imprisonment for one month for the offence punishable under Section 121(A) IPC.

The appellants have been further directed to undergo rigorous imprisonment for ten years and with fine Rs. 5,000/- and in default, simple imprisonment for one month for the offence punishable under Section 122 IPC.

They are further sentenced to undergo imprisonment for five years and fine Rs. 2,000/- and in default, simple imprisonment for one month for the offence punishable under Section 123 IPC.

They have been further sentenced to undergo imprisonment for ten years and to pay fine of Rs. 5,000/- and in default, simple imprisonment for one month for the offence punishable under Section 16 of the U.A.(P) Act.

They have been further sentenced to undergo imprisonment for five years and to pay fine of Rs. 2,000/- and in default, simple imprisonment for one month, for the offence punishable under Section 18 of the U.A.(P) Act.

They are further sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs. 5,000/- and in default, simple

imprisonment for one month, for the offence punishable under Section 20 of the U.A.(P) Act.

They are further sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs. 5,000/- and in default, simple imprisonment for one month, for the offence punishable under Section 4 of the Explosive Substances Act.

The appellants have been further sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs. 5,000/- and in default, simple imprisonment for one month, for the offence punishable under Section 5 of the Explosive Substance Act.

7. It appears from the records that petition filed on behalf of the appellants contained a common statement that the accused persons have made up their mind to plead guilty in the instant case to lead a healthy life with the mainstream of the society. A prayer was made to take a lenient view since the accused persons were praying for mercy on humanitarian ground. This Court deems it just and proper to reproduce the petition filed on behalf of the appellant nos. 2 and 3 hereunder for a ready reference:-

“IN THE COURT OF THE LEARNED SPECIAL JUDGE, N.I.A. PATNA
SPECIAL (N.I.A.) CASE NO. 1 OF 2018

UNION OF INDIA

-VERSUS-

1. AHMED ALI @ KALU (A-2 arrested on 03.08.2018)

2. MUSTAFIJUR RAHMAN SHAHEEN @ TUHIN (A-7
arrested on 03.08.2018)

3. ABDUL KARIM KORIM SHEIKH @ IQBAL @ FANTU SHEIKH (A-6, arrested on 03.08.2018)

4. NUR ALAM MOMIN (A-6, arrested on 03.08.2018)

5. ARIF HUSSAIN @ ATAUR @ SAYEED @ ANAS @ ALAMGIR SHEIKH (A-9)

6. Md. Adil Sheikh @ Asadullah @ Abdullah, S/o Lalijam Sheikh

..... Petitioner (in Jail

Petitioner nos. 1 and 4 are the appellant nos. 2 and 3 in this appeal.

The humble petition on behalf of the
Petitioners above named.

Most Respectfully Sheweth:

1. That the petitioners are a peace loving and law abiding citizen of India having permanent home hearth and roots in the community.
- 2 That the petitioners were arrested in the instant case as mentioned herein above and since then they are languishing in custody beyond any comprehensive reason whatsoever.
3. That the accused persons have made up their mind to plead guilty in the instant case to lead healthy life with the main stream of the society since the detention has rectified and/or corrected the accused persons and the accused persons are repenting for their family members and/or parents and/or children and the same compelled them to come back and take a journey with the main stream of society.
4. That in the light of the above your honour would graciously be pleased to accept the instant “plea of guilty” of the accused person with lenient view since the accused persons are praying for mercy on humanitarian ground out own volition and being guilty of the offence.
5. That this application is made bona-fide for the best interest of justice.

It is therefore most humbly prayed that in the light of the above your honour would graciously be pleased to accept the instant “plea of guilty” of the accused persons with lenient view since the accused person is praying for mercy on humanitarian ground and to pass such order/orders as your Lordship may deemed fit and proper.

And for this act of kindness your petitioner as in duty bound
shall ever pray.”

On behalf of the appellant no.1 also a petition pleading
guilty was filed. The same is being reproduced hereunder:-

“IN THE COURT OF THE LEARNED SPECIAL JUDGE, N.L.A. PATNA
SPECIAL (N.I.A.) CASE NO. 1 OF 2018

UNION OF INDIA

-VERSUS-

1. Paigambar Sheikh @ Abdul Aziz @ Phaim

..... Petitioner (in Jail

The humble petition on behalf of the
Petitioners above named.

Most Respectfully Sheweth:

1. That the petitioners are a peace loving and law abiding citizen of India having permanent home hearth and roots in the community.
- 2 That the petitioners were arrested in the instant case as mentioned herein above and since then they are languishing in custody beyond any comprehensive reason whatsoever.
3. That the accused persons have made up their mind to plead guilty in the instant case to lead healthy life with the main stream of the society since the detention has rectified and/or corrected the accused persons and the accused persons are repenting for their family members and/or parents and/or children and the same compelled them to come back and take a journey with the main stream of society.
4. That in the light of the above your honour would graciously be pleased to accept the instant “plea of guilty” of the accused person with lenient view since the accused persons are praying for mercy on humanitarian ground.
5. That this application is made bona-fide for the best interest of justice.

It is therefore most humbly prayed that in
the light of the above your honour would
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“plea of guilty” of the accused persons

with lenient view since the accused person is praying for mercy on humanitarian ground and to pass such order/orders as your Lordship may deemed fit and proper.

And for this act of kindness your petitioner as in duty bound shall ever pray.”

Submissions on behalf of the appellants

8. Learned Senior counsel for the appellants has assailed the impugned judgment mainly on the ground that the learned trial court has acted in haste in convicting the accused persons on the basis of the plead guilty petition filed on their behalf. It is his submission that the learned trial court was required to record the plea of the accused persons and ensure that the plea of guilt tantamounts to an admission of all the facts constituting the offence. In his submission, before accepting and acting on a plea, the learned court was required to satisfy itself that the accused admits facts for ingredients constituting the offence. Learned Senior counsel has relied upon a judgment of the Hon’ble Supreme Court in the case of **State of Maharashtra through C.B.I vs. Sukhdev Singh @ Sukha and others** reported in **1992 3 SCC 700**.

9. Learned Senior counsel submits that on a bare perusal of the petition filed on behalf of the appellants in the learned trial court it would appear that their statements in the petition would not amount to an admission of all the facts constituting the

offence. Rather it would show that the petition is more by way of a mercy petition without admitting the facts which would constitute the offence.

10. Learned Senior counsel further submits that from paragraph '10' and '11' of the judgment of the learned trial court it may be noticed that the learned trial court took the petition of the accused persons on the record on 10.12.2021 for consideration, in the first half of the court session, the learned presiding judge asked the accused persons as to whether they are pleading guilty voluntarily and after understanding all the charges leveled against them, the accused persons-appellants are said to have replied that they have understood all the consequences of pleading guilt and they were making it voluntarily. Thereafter, the court was adjourned for the post lunch session allowing time to the accused persons to rethink about their decision. In the post lunch session, the court again asked the same questions to the accused persons and then on their reiterating the stand, the learned court went on to record the judgment of conviction. Learned Senior counsel further submits that in fact neither at the time of recording conviction nor at the time of awarding the sentence, learned counsel for the appellants were present and this may be found from paragraph '12' of the judgment where the order of sentence has been recorded.

11. On the strength of the aforesaid submissions, learned Senior counsel for the appellants would submit that the learned trial court has passed the impugned judgment of conviction and sentence in haste. It is submitted that in fact the appellants were not made to know that in their case the charge under Section 121 IPC has also been framed which would have a minimum sentence of life imprisonment. So far as other accused were concerned, against them the charge under Section 121 IPC was not framed but when the petition pleading guilty was filed, it was filed initially on behalf of the appellant nos. 2 and 3 with other accused who were not charged under Section 121 IPC and then on behalf of the appellant no.1 the petition was filed on 10.12.2021. There was lack of communication and understanding because while these three appellants were charged under Section 121 IPC, the others including A-4, A-5 and A-9 who were the accused persons who had planted bombs were not charged under Section 121 IPC. Learned Senior counsel has drawn the attention of this Court towards the facts recorded in paragraph '11' of the judgment wherein it has come that these appellants had not been chargesheeted under Section 121 IPC but the charge was framed by the predecessor Judge even under Section 121 IPC only against these three appellants. Learned Senior counsel submits that

because of this error in framing of charge while the other accused persons including those who had allegedly planted bombs have got a maximum sentence of ten years rigorous imprisonment only, these three appellants have been awarded a sentence of life imprisonment under Section 121 IPC. This has resulted in miscarriage of justice.

12. Referring to Section 464 CrPC, learned Senior counsel submits that this Court being appellate court may exercise its' power to set aside the judgment of conviction and order of sentence and remand the matter to the learned trial court to consider the matter afresh from the stage of filing of the petition pleading guilty by the appellants and the appellants be given an opportunity to take steps in accordance with law.

Submissions on behalf of the NIA

13. Mr. Arvind Kumar, learned counsel for the NIA, has opposed the appeal. It is submitted that appellants had not challenged the order framing charge *inter-alia* under Section 121 IPC, therefore, once they pleaded guilty, the learned trial court has rightly convicted them under various provisions of the IPC including Section 121 IPC in which there could not have been a punishment lesser than life imprisonment.

14. Learned counsel has in course of submission come across the petition filed on behalf of the appellants in the learned trial court whereby and whereunder they have pleaded guilty. This Court called upon learned counsel for the NIA to demonstrate from the petition as to whether in any of the paragraphs of the petition the appellants have made statements admitting facts which would constitute offence. Learned counsel has, after going through the petition categorically submitted that in the petition at least there is no such statement admitting the facts which would constitute the offences charged for, but learned counsel has defended the judgment of the learned trial court saying that once the accused persons had filed a petition showing that they had made up their mind to plead guilty in the instant case, the learned trial court had no option but to proceed with the matter on the basis of the petition filed on behalf of the accused persons-appellants.

Consideration

15. Having heard learned Senior counsel for the appellants and learned counsel for the NIA as also on going through the records, we find force in the submission of learned Senior counsel for the appellants. It is found that in this case the charge-sheet was filed against these appellants for the offence under Sections 121A, 122 and 123 of the Indian Penal Code,

Sections 16, 18 and 20 of the Unlawful Activities (Prevention) Act and Sections 4 and 5 of the Explosive Substances Act. It is evident that the charge-sheet was not filed under Section 121 IPC but at the time of framing of charge, the learned trial court framed charges including under Section 121 IPC against the appellants. At the same time, in respect of the other accused persons, no charge was framed under Section 121 IPC.

16. All the accused persons, including the appellants, filed petition pleading guilty. In the said petition also no distinction was shown in the case of the present appellants and others and the petition was filed as if the charges were identical against all the accused persons.

17. From the judgment of the learned trial court particularly paragraphs '10' and '11', we find that on the same day in first half and second half of the court sessions, the learned trial court took up the exercise of examining the accused as to whether they had been making the statements voluntarily and after understanding all the charges leveled against them. The judgment nowhere records presence of their respective lawyers when the statements were being made by the accused persons. In paragraph '7' of the judgment, however, it is recorded that the learned counsel for the appellants had moved the application making a

submission that the appellants are peace loving and law abiding citizens of India and that they had made up their minds to plead guilty in order to lead a healthy life in the mainstream of the society. In the order of sentencing, it is recorded that no one turned up on behalf of the accused persons.

18. In the case of **State of Maharashtra vs. Sukhdev Singh @ Sukha and others (*supra*)** while considering this aspect of the matter as to how to proceed with a case where the accused pleads guilty, the Hon'ble Supreme Court has observed in paragraph '52' as under:-

“..... Where the Judge frames the charge, the charge so framed has to be read over and explained to the accused and the accused is required to be asked whether he pleads guilty of the offence charged or claims to be tried. Section 229 next provides that if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon. The plain language of this provision shows that if the accused pleads guilty the Judge has to record the plea and thereafter decide whether or not to convict the accused. The plea of guilt tantamounts to an admission of all the facts constituting the offence. It is, therefore, essential that before accepting and acting on the plea the Judge must feel satisfied that the accused admits facts or ingredients constituting the offence. The plea of the accused must, therefore, be clean, unambiguous and unqualified and the Court must be satisfied that he has understood the nature of the allegations made against him and admits them. The Court must act with caution and

circumspection before accepting and acting on the plea of guilt. Once these requirements are satisfied the law permits the Judge trying the case to record a conviction based on the plea of guilt....”

19. We find from the records that in this case, the judgment of the conviction has been recorded without being satisfied that in their petition the accused persons have admitted the facts constituting the offence. Further to this Court, it appears that the learned trial court was required to give sufficient time to the accused persons to rethink, consult their lawyers and understand the consequences of their admission of guilt but that was not done and only in one day during first and second session of the court, the entire exercise was completed. This seems to have resulted in miscarriage of justice, therefore, we are of the view that the impugned judgment and order are liable to be set aside and the matter be remanded to the learned trial court to proceed from the stage of filing of the petition pleading guilty by the accused persons.

20. Accordingly, this Court sets aside the impugned judgment of conviction and order of sentence and remand the matter to the learned trial court to take a fresh view of the matter from the stage of the filing of the petition pleading guilty by the appellants and after giving appropriate opportunity to the accused persons-appellants, pass appropriate order in accordance with law.

21. This appeal is allowed to the extent indicated hereinabove.

22. The learned trial court records be sent back.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

Rishi/Raj-

AFR/NAFR	
CAV DATE	
Uploading Date	29.06.2024
Transmission Date	29.06.2024