

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.381 of 2024

Arising Out of PS. Case No.-31 Year-2018 Thana- NIA District- Patna

SHIVENDRA RAJAK @ SHEELENDRA RAJAK @ SHAILENDRA
RAJAK S/O PURUSHOTAM LAL RAJAK R/O VILLAGE/MOHALLA-
HOUSE NO.- L-3/1 PANCHSHEEL NAGAR, NARMADA ROAD, P.S-
GORAKHPUR, DISTT.- JABALPUR, MADHYA PRADESH.

... .. Appellant

Versus

1. The State of Bihar
2. THE UNION OF INDIA THROUGH THE DIRECTOR GENERAL,
NATIONAL INVESTIGATION AGENCY C.G.O. COMPLEX, LODHI
ROAD, NEW DELHI.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Thakur Manish Mohan, Advocate Mr. Amit Pandey, Advocate
For the Respondent NIA :		Dr. K.N.Singh, A.S.G. Mr. Manoj Kumar Singh, Spl. PP NIA Mr. Ankit Kumar Singh, Advocate Mr. Pramod Kumar, P.P. NIA Mr. Shivaditya Dhari Sinha, AC to ASG

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 12-09-2024

The appellant has filed the present appeal under
Section 21(4) of the National Investigation Agency Act
(hereinafter referred to as 'the NIA Act') against the order dated
19.02.2024 passed by the learned Special Judge, N.I.A., Patna, in
connection with Special Case No. 08 of 2018 arising out of R.C.
Case No. 31 of 2018, whereby the concerned Special Court has
rejected the application filed by the appellant for grant of bail.



2. The brief facts leading to the filing of the present appeal are as under: -

2.1. The prosecution case, in brief, is that one Inspector Bindeswari Yadav has lodged a written report dated 05.10.2018 stating therein, *inter alia*, that the Central Government has received information regarding registration of F.I.R. No. 323 of 2018 dated 07.09.2018 at Mufassil Police Station in the district of Munger, Bihar, under Sections 121, 379, 414, 120B read with Section 34 of the Indian Penal Code (IPC), Sections 25(1A), 25(1AA), 25(1B)(a) of the Arms Act as well as under Section 26 and 35 of the Arms Act read with Section 39 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'the UAPA') relating to recovery of three AK-47 weapons and arrest of two persons, who were involved in supply of AK-47 weapons to Maoists and other criminals in various States from Army Armoury, Jabalpur (MP). Accordingly, the case has been registered as RC/31/2017/NIA/DLI dated 05.10.2018.

2.2. It is evident from the format of the FIR that altogether 26 persons were named in the category of accused. The appellant is shown as accused No. XII in the FIR.

2.3. It is the case of the appellant that he is in custody since last approximately six years and, therefore, he filed



application for grant of regular bail in Special Case No. 08 of 2018, arising out of R.C. No. 31 of 2018, before the learned Special Judge, NIA, Patna, however, the learned Special Judge, by the impugned order dated 19.02.2024, rejected the said application and, therefore, the appellant has filed the present appeal.

3. Heard Mr. Thakur Manish Mohan, learned counsel for the appellant and Mr. Manoj Kumar Singh, learned Special P.P. for the respondent NIA.

4. Learned counsel for the appellant would mainly submit that though the appellant is named in the FIR as accused No. 12, the Investigation Agency has failed to collect any evidence connecting the appellant with the incident in question and in fact the appellant is son of accused Purushottam Lal Rajak, whose confessional statement was recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short 'the Code') and, therefore, the appellant has been implicated. Learned counsel pointed out from the papers of the charge-sheet dated 05.03.2019 that the appellant is not named in the original charge-sheet, however, in paragraph 16.56 of the supplementary charge-sheet No.1, the appellant's name has been referred. It is further submitted that in paragraph Nos. 16.38 to 16.41 of the supplementary charge-sheet dated 14.05.2019, the Investigation



Agency has figured out details of the Bank Accounts of the appellant and pointed out that there are certain transactions which took place in the bank accounts of the appellant and it is alleged that the appellant has earned it from illegal sources and was proceeds of crime from arms smuggling. It is further contended that the appellant was a bright student and he did his MBA course and he was dealing in grocery business.

4.1. Learned counsel further submits that the only material collected by the respondent NIA against the appellant is that the appellant went to drop his parents to Katni Railway Station, Jabalpur, Madhya Pradesh. Further, the respondent NIA has failed to bring any material evidence or CCTV footage either from Jabalpur Railway Station or Jamalpur Railway Station that the trolley bag was handed over to Md. Imran Alam and Md. Shamsheer Alam by the father of the appellant.

4.2. Learned counsel, at this stage, submits that the respondent prosecuting Agency has cited more than 150 witnesses, out of which, the prosecution has examined 52 witnesses as on date and, therefore, the trial of the present case would not be over in the near future. It is further submitted that none of the prosecution witnesses, who have been examined till date, have deposed against the present appellant.



4.3. Learned counsel lastly submitted that the appellant is in custody since last six years and, therefore, he may be released on bail.

5. On the other hand, learned counsel for the respondent NIA has vehemently opposed the present appeal. Learned counsel for the respondent has referred the averments made in the counter affidavit filed on behalf of the respondent. Learned counsel has also submitted case-diary as well as the papers of the charge-sheet for perusal of this Court. Thereafter, learned counsel submitted that AK-47 rifles were being smuggled by accused Purushottam Lal Rajak keeping the same in trolley bag accompanied by his wife Chandrawati Devi from Jabalpur to Jamalpur and the same were used to be collected by accused Md. Shamsher Alam and Md. Imran Alam. The said aspect is corroborated by the CCTV footage of Katni Railway Station. It is further submitted that the accused Purushottam Lal Rajak, the kingpin of whole racket, used to take out the said weapons from COD, Jabalpur, with the help of other co-accused including Suresh Thakur and others and sold the weapons to accused Md. Niyazur Rehman @ Niyazul Rehman @ Gulu, Md. Shamsher Alam, Md. Imran Alam and Bajrang Shankar, who use to further sale these weapons. It is further submitted by learned counsel that the present appellant, who is shown as



accused no.12 in the FIR, it was found, during the course of investigation, that he was involved in the conspiracy and supply of illegal prohibited arms, i.e., AK-47. Further, the conspiracy of procurement of arms from COD, Jabalpur, its supply and distribution has been established by the statement made under Section 164 of the Code of the accused persons, namely, Purushottam Lal Rajak, Manoj Singh, Suresh Thakur and Bajrang Shankar. This fact was also established with the statement of the witnesses recorded under Section 161 of the Code. Further, the same has been corroborated by the statement of Protected Witness during the course of investigation.

5.1. At this stage, it is also pointed out that accused Purushottam Lal Rajak supplied AK-47 rifles keeping the same in trolley bags with his wife Chandrawati Devi up to Jamalpur in the night of 28-29 August, 2018. The accused Purushottam Lal Rajak and the present appellant, each were holding one trolley bag with Chandrawati Devi and they were seen at Katni Railway Station platform for boarding the Kurla-Bhagalpur Superfast Express for Jamalpur for delivery of arms. CCTV footage were collected from Katni Railway Station.

5.2. Learned counsel for the respondent would further submit that during the course of investigation, statement of



bank accounts of the appellant maintained with various banks were collected and the collected documents and the statements of the banks accounts reveal that high value transactions took place during the relevant period. In fact, the appellant has got no other source of income save and except this illegal arms smuggling business. The appellant also purchased land, shop, flat, vehicles in his name from the aforesaid amount. Thus, the Investigation Agency filed the charge-sheet against the appellant as well as the other accused under various provisions of the IPC as well as Arms Act and under the provisions of UAPA.

5.3. At this stage, it has been pointed out by the learned counsel for the respondent that before the charges were framed, the concerned accused persons filed discharge application one after another, as a result of which, delay has been caused in proceeding with the trial. Charges were thereafter framed against the accused and all the six cases were amalgamated. The concerned Special Court was vacant from 02.01.2023 to 12.07.2023, now the trial has commenced and the prosecution has examined 52 witnesses. Learned counsel, therefore, urged that once the trial has commenced, at this stage, the appellant may not be released on bail.



5.4. Learned counsel for the respondent, at this stage, pointed out from the record, i.e., the averments made in paragraph 3 of the memo of appeal, that five cases have been registered against the present appellant, thus, when the appellant is having criminal antecedents, his case may not be considered for grant of bail. It is also submitted that this Court has rejected the Criminal Appeals filed by co-accused Bajrang Shankar, Md. Niyazur Rehman @ Niyazul Rehman @ Gulu, Md. Irfan @ Md. Irfan Alam and Rizvana Begham. It is further submitted on instructions that till today, the aforesaid accused have not challenged the orders passed by this Court before the higher forum.

5.5. Learned counsel for the respondent NIA, therefore, urged that the present appeal be dismissed.

6. We have considered the submissions canvassed by learned counsel for the parties and we have also perused the materials placed on record including the charge-sheet papers supplied by learned counsel for the respondent NIA.

6.1. From the material placed on record, it would emerge that RC-31/2018/NIA/DLI has been registered on 05.10.2018 after lodging of FIR No. 323 of 2018 dated 07.09.2018 at Mufassil Police Station in the district of Munger, Bihar. The



investigation was taken over by the NIA. In the FIR, 26 persons have been named and the present appellant has been shown as accused no.12. From the papers of the charge-sheet, it would reveal that specific allegation has been levelled against the accused Purushottam Lal Rajak, who is father of the present appellant and whose statement has been recorded under Section 164 of the Code, that he has been involved in the conspiracy of procurement of arms from COD, Jabalpur, its supply and distribution to other co-accused. AK-47 rifles were being smuggled by the said accused keeping them in the trolley bags through his wife Chandrawati Devi from Jabalpur to Jamalpur in the night of 28-29 August, 2018. Accused Purushottam Lal Rajak and the present appellant, each were holding one trolley bag with Chandrawati Devi and they were seen at Katni Railway Station platform for boarding the Kurla-Bhagalpur Superfast Express to Jamalpur for delivery of arms to two other co-accused. It is further revealed from the charge-sheet papers, more particularly, paragraphs 16.37 to 16.40, that the investigating agency has collected the statements of bank accounts of the appellant maintained with various banks, from which it was revealed that high value transactions had taken place in the bank accounts of the appellant and it is the specific allegation of the prosecution that the appellant has got no other



source of income save and except than illegal arms smuggling business. It is further stated in paragraph 16.42 of the charge-sheet that Purushottam Lal Rajak, father of the appellant, purchased five acres land in village Padwar in the name of the present appellant. Other properties were also purchased in the name of appellant. Similarly, vehicles were also purchased in the name of the appellant.

6.2. Thus, from the aforesaid material collected by the investigating agency, this Court is of the opinion that there are reasonable grounds for believing that the accusation levelled against the present appellant is *prima facie* true.

6.3. At this stage, we would like to refer the provisions contained in Section 43D(5) of UAPA, which provides as under: -

“(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.”

6.4. From the aforesaid provisions, it can be said that if the Court is of the opinion, after perusal of the case-diary or the report made under Section 173 of the Code, that there are reasonable ground for believing that the accusation levelled against a person is *prima facie* true, then such person/accused shall not be released on bail.

6.5. At this stage, we would like to refer the decision rendered by the Hon’ble Supreme Court in the case of ***National Investigation Agency Vs. Zahoor Ahmad Shah Watali***, reported in **(2019) 5 SCC 1**. The Hon’ble Supreme Court has observed in paragraphs 26, 27 and 52-56 as under: -

“26. Be it noted that the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. To wit, soon after the arrest of the accused on the basis of the FIR registered against him, but before filing of the charge-sheet by the investigating agency; after filing of the first charge-sheet and before the filing of the supplementary or final charge-sheet



consequent to further investigation under Section 173(8) CrPC, until framing of the charges or after framing of the charges by the Court and recording of evidence of key witnesses, etc. However, once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.

27. For that, the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analyzing individual pieces of evidence or circumstance. In any



case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is.

52. The learned Attorney General, relying on the underlying principle in Khoday Distilleries Ltd. v. State of Karnataka [Khoday Distilleries Ltd. v. State of Karnataka, (1995) 1 SCC 574, para 60] , would contend that there cannot be business in crime and, as such, Section 34 of the Evidence Act will have no application. He further submits that the prosecution may use the facts noted in the said document and prove the same against the respondent by other evidence. This argument need not detain us. For, we find force in the argument of the learned Attorney General that the issue of admissibility and credibility of the material and evidence presented by the investigating officer would be a matter for trial. Furthermore, indubitably, the prosecution is not solely relying on Document No. D-132(a) recovered from the residence of Ghulam Mohammad Bhatt (W-29). There are also other incriminatory documents recovered from respondent (Accused 10) himself during



the search, including other independent evidence, which, indeed, will have to be proved during the trial.

53. The appellant has relied on the exposition in Salim Khan [Salim Khan v. Sanjai Singh, (2002) 9 SCC 670 : 2003 SCC (Cri) 1524] , to contend that in cases where the High Court adopted a totally erroneous approach, as in the present case, discarding the crucial material/evidence which is referred to in the report under Section 173 CrPC and presented before the Designated Court, then the order granting bail by the High Court cannot be countenanced. The argument of the respondent is that the said decision would make no difference as it is concerning an application for cancellation of bail made by the informant. However, we find force in the argument of the appellant that the High Court, in the present case, adopted an inappropriate approach whilst considering the prayer for grant of bail. The High Court ought to have taken into account the totality of the material and evidence on record as it is and ought not to have discarded it as being inadmissible. The High Court clearly overlooked the settled legal position that, at the stage of considering the prayer for bail, it is not necessary to weigh the material, but only form opinion on the basis of the material before it on broad probabilities.



The court is expected to apply its mind to ascertain whether the accusations against the accused are prima facie true. Indeed, in the present case, we are not called upon to consider the prayer for cancellation of bail as such but to examine the correctness of the approach of the High Court in granting bail to the accused despite the materials and evidence indicating that accusations made against him are prima facie true.

54. In a decision of this Court in Chenna Boyanna Krishna Yadav [Chenna Boyanna Krishna Yadav v. State of Maharashtra, (2007) 1 SCC 242 : (2007) 1 SCC (Cri) 329] , to which reference has been made, the Court has restated the twin conditions to be considered by the Court before grant of bail in relation to MCOCA offences. We are of the view that in the present case, the Designated Court rightly opined that there are reasonable grounds for believing that the accusation against the respondent is prima facie true. As we are not inclined to accept the prayer for bail, in our opinion, it is not necessary to dilate on other aspects to obviate prolixity.

55. A fortiori, we deem it proper to reverse the order passed by the High Court granting bail to the respondent. Instead, we



agree with the conclusion recorded by the Designated Court that in the facts of the present case, the respondent is not entitled to grant of bail in connection with the stated offences, particularly those falling under Chapters IV and VI of the 1967 Act.

56. Accordingly, this appeal succeeds. The impugned judgment and order [Zahoor Ahmad Shah Watali v. NIA, 2018 SCC OnLine Del 11185] is set aside and, instead, the order passed by the Designated Court rejecting the application for grant of bail made by the respondent herein, is affirmed.”

6.6. Keeping in view the aforesaid provisions contained in Section 43D(5) of the UAPA as well as the aforesaid decision rendered by the Hon’ble Supreme Court in the facts of the present case and the involvement of the present appellant in the incident in question and the charge-sheet papers, it can be said that the accusation levelled against the appellant is *prima facie* true and, therefore, the aforesaid provisions contained in Section 43D(5) of the UAPA would be attracted.

6.7. At this stage, we would also like to observe that there are five criminal antecedents reported against the present appellant and, therefore, merely because the appellant is in custody for last six years, he cannot be released on bail on this ground



looking to the overall facts and circumstances of the present case. Further, in the present case, trial was delayed because of the fact that the concerned accused filed discharge applications one after another. Now, the trial has commenced and the prosecution has examined approximately 52 witnesses.

6.8. We have also gone through the reasoning recorded by the Special Court while rejecting the application submitted by the present appellant for grant of bail, we are of the view that the Special Court has not committed any error while rejecting the said application.

7. In the aforesaid facts and circumstances of the present case, we are not inclined to entertain the present appeal. Accordingly, the present appeal stands dismissed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

Pawan/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	13.09.2024.
Transmission Date	13.09.2024.

