

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.562 of 2024

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

Rizwana Begum W/o Khurshid Alam R/O Vill.- Mirzapur Bardah, P.S.-
Muffasil, Dist.- Munger

... .. Appellant/s

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.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Madhukar Anand, Advocate Mr. Ravindra Kumar, Advocate Mr. Subham Kumar Singh, Advocate
For the State	:	Mr.Parmeshwar Mehta, Addl.P.P.
For the UOI	:	Mr. (Dr.) K.N. Singh, ASG Mr. Manoj Kumar Singh, Spl.P.P., NIA Mr. Ankit Kumar Singh, Advocate Mr. Shivadiya Dhari Sinha, AC to ASG

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

4 18-07-2024 Heard learned counsel for the appellant, Mr. (Dr.)

K.N. Singh, learned A.S.G. assisted by Mr. Manoj Kumar

Singh, learned Spl.P.P., NIA as also Mr. Parmeshwar Mehta,

learned Additional Public Prosecutor for the State.

2. This appeal has been preferred for setting aside the

order dated 16.03.2024 passed by the learned Special Judge,

N.I.A., Patna in Special Case No.8 of 2018 arising out of R.C.

No.31 of 2018. By the impugned order, the learned Special



Judge, NIA, Patna, Bihar has rejected the regular bail petition of the appellant keeping in view the materials on the record, provision of Section 43D(5) of the U.A.(P) Act and the judgment of the Hon'ble Supreme Court in the case of **National Investigation Agency Vs. Zahoor Ahmad Shah Watali** reported in **(2019) 5 SCC 1**. It is stated in paragraph '3' of the memo of appeal that this appellant is facing trial in 7 other cases.

3. Learned counsel for the appellant has submitted before this Court that according to the prosecution story, one Shamsheer Alam who is the brother of the appellant had handed over a trolley bag containing AK-47 rifles not only to this appellant but also to her husband Khursheed Alam but no charge-sheet was filed against him and he has been granted default bail whereas this appellant is in custody since 08.09.2018.

4. It is submitted that in this case the prosecution has cited 196 witnesses in the charge-sheet out of whom only 42 witnesses have been examined so far, therefore, the trial of the case is not likely to be concluded in near future. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Javed Gulam Nabi Shaikh vs. State of Maharashtra and Another**



reported in **2024 SCC Online SC 1693**, learned counsel submits that in the said case the Hon'ble Supreme Court was pleased to grant bail to the appellant who was being prosecuted by the National Investigation Agency (NIA) and was in custody for past four years. In it's judgment, the Hon'ble Supreme Court has once again reiterated it's views expressed by the Hon'ble three-judge bench of the Apex Court in the case of **Union of India Vs. K.A. Najeeb** reported in **(2021) 3 SCC 713** in which the Hon'ble Supreme Court had occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAP Act. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation** reported in **(2022) 10 SCC 51**.

5. The appeal has been opposed by learned counsel for the NIA. A counter affidavit has been filed wherein it is stated that on the disclosure of Shamsheer Alam who is the brother of this appellant three AK-47 rifles along with other weapons were recovered from the house of this appellant. The investigation has established that AK-47 rifles were stolen from COD, Jabalpur in connivance with the accused persons. One Purshottam Lal Rajak who was posted as Constable Armourer at



COD, Jabalpur is the kingpin of the whole racket in supply of SLR/AK-47 rifles during his posting at Kibutu (Arunachal Pradesh) in the year 2002. Purshottam Lal Rajak has made statement under Section 164 Cr.P.C. in which he has taken name of several other persons who were involved in the gang. The investigation has revealed that AK-47 which was recovered from the house of the appellant was mentioned in the list provided by COD, Jabalpur.

6. Learned counsel submits that the learned trial court is proceeding with the trial at a reasonable pace, the number of the witnesses have been pruned and now the NIA is going to examine only 102 witnesses out of whom 42 have already been examined. It is submitted that every month 7-8 witnesses are being examined, therefore, there is every possibility that the trial itself will be concluded within a year or little more than a year.

7. It is submitted that so far as the Hon'ble three-judge bench decision in **K.A. Najeeb** (supra) is concerned, the observations made in paragraph '17' would make it clear that in the said case the Hon'ble Apex Court was of the view that there was no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone had exceeded a substantial part of the prescribed sentence. In such



circumstance, it was observed that Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. There was an attempt to harmonize the restrictions under the statute as well as the powers exercisable under constitutional jurisdiction.

8. It is pointed out that so far as the case of Javed Gulam Nabi Shaikh (supra) is concerned, in the said case the Hon'ble Supreme Court found that the accused was in incarceration for more than four years but till that date the trial court had not even proceeded to frame charge. It is submitted that in the said case there were 80 witnesses to be examined and the charge was not framed whereas in the present case the trial has proceeded ahead and substantial number of witnesses have already been examined.

9. Learned counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Zahoor Ahmad Shah Watali** (supra) wherein the Hon'ble Supreme Court has held that the bail proceedings in the special enactments are distinct and the courts are duty bound to refuse bail where the suspect is prima-facie believed to be guilty.

10. We have heard learned counsel for the parties and



perused the records. The learned trial court has, after discussing the entire materials, taken a view that the accusations against the appellant appear to be prima-facie true. We do not find any reason to differ with the said observation of the learned Special Judge, NIA, Patna at this stage when the trial is still proceeding.

11. We have noticed the submissions of learned counsel for the NIA that every month 7-8 witnesses are going to be examined in this case and the trial itself is likely to be concluded within one year or little more than that. In the present case, if the appellant is convicted and sentenced, the maximum punishment may go up to life imprisonment, therefore, it cannot be said that the appellant at this stage has undergone substantial part of the prescribed sentence.

12. We do not find any merit in the appeal. It is dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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