

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.563 of 2023

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

Manoj Kumar Singh Son Of Uday Prasad Singh Resident Of Village- Aadarsh
Tola, Bindwara, Ps- Kasim Bazar, Distt- Munger

... .. Appellant

Versus

1. National Investigation Agency Through Its Director General, CGO Complex,
Lodhi Road, New Delhi New Delhi
2. State Of Bihar

... .. Respondents

Appearance :

For the Appellant	:	Mr. Prabhat Ranjan Singh, Advocate
For the Respondent	:	Mr. Arvind Kumar, S.P.C. P.P., NIA
For the NIA	:	Dr. K.N. Singh (A.S.G.), Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

4 12-02-2024 The present appeal has been filed under Section 21
(4) of National Investigation Agency Act, 2008 (hereinafter
referred to as NIA Act) against order dated 02.05.2023, passed
by Incharge Special Judge in Special Case No. 08 of 2018, R.C.
No. 31/2018/NIA/DLI, dt. 05.10.2018, whereby the concerned
Special Court has rejected the application for bail filed by the
present appellant.

2. Heard Mr. Prabhat Ranjan Singh, learned Advocate
for the appellant, learned Senior Advocate, Dr. K.N. Singh
(A.S.G.) and learned Advocate, Mr. Arvind Kumar (S.P.C. P.P.),



for the NIA.

3. Learned Advocate for the appellant submits that the FIR being R.C. No. 31/2018/NIA/DLI, dt. 05.10.2018, came to be registered before Muffasil P.S. Case No. 323 of 2018 on 07.09.2018. However, thereafter, the investigation was transferred to NIA under the provisions of NIA Act. The said FIR was lodged for the offences punishable under Sections 121, 379, 414, 120B read with Section 34 of IPC as well as Sections 25 (1A), 25 (1AA), 25(1B)(a), 26 and 35 of Arms Act and Section 39 of Unlawful Activities (Prevention) Act, 1967.

4. Learned Advocate for the appellant further submits that during the course of the investigation the appellant has surrendered before the Investigating Agency and thereafter, his statement under Section 164 of the Code of Criminal Procedure came to be recorded before the concerned Magistrate. It is submitted that after the investigation, the Investigating Agency has already filed the charge-sheet against the appellant and the trial is pending before the concerned trial court. It is further submitted that as per the case of the prosecution, the only allegation levelled against the appellant is that he had purchased AK-47 rifle from Md. Irfan at a price of Rs. 5.5 lakhs in the year 2014. He has further confessed that the aforesaid AK-47 rifle



was subsequently handed over to one Munna Singh. Thereafter, it is revealed from the investigation that he has organized meeting with Munna Singh and the said rifle was handed over to Munna Singh and the appellant got Rs. 10,000/- only out of the aforesaid transaction. Learned Advocate, therefore, urged that except the aforesaid allegation, no other allegation is levelled against the appellant in the investigation papers and when the appellant is in custody since 21.01.2019, he may be enlarged on bail.

5. On the other hand, learned Advocate appearing for the Respondent-Agency has vehemently opposed the prayer made by the learned Advocate for the appellant for grant of bail. Learned Advocate has referred the counter-affidavit submitted on behalf of the Respondent. Thereafter, it is contended that there are antecedents against the appellant and two other FIRs came to be lodged against him. It is further submitted that there is a bar under Section 43D(5) of UAPA and in such cases, the Court shall not grant bail to the accused of UAPA. Learned Advocate, at this stage, has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of *Gurwinder Singh vs State of Punjab* rendered in Cr. Appeal No. 704 of 2024 on 7th February, 2024. Learned Advocate for the



Respondent submitted in the aforesaid decision, the Hon'ble Supreme Court has discussed in detail with regard to the bar provided under the provisions of UAPA for grant of bail. Learned Advocate, therefore, urged that the present Appeal may not be entertained. It is also contended that trial is already commenced and 16 witnesses have been examined. Hence, at this stage, appellant may not be released on bail.

6. We have considered the submissions canvassed by the learned Advocates appearing for the parties. We have also perused the materials placed on record including the counter-affidavit filed by the Respondent in the papers of the charge-sheet supplied to us. From the record it would emerge that the appellant was specifically named in the FIR and during the course of investigation, it is a case of the appellant that he has surrendered before the Investigating Agency. It is also not in dispute that there are antecedents against the appellant and two other cases have been registered against him. At this stage, we would like to refer to the provisions contained in Section 43 D(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.”

7. At this stage, we would also like to refer to the recent decision rendered by the Hon'ble Supreme Court in the case of Gurwinder Singh (supra) wherein the Hon'ble Supreme Court has observed in Paragraphs “17 to 23” as under :-

*“17. A bare reading of Sub-section (5) of Section 43D shows that apart from the fact that Sub-section (5) bars a Special Court from releasing an accused on bail without affording the Public Prosecutor an opportunity of being heard on the application seeking release of an accused on bail, the proviso to Sub-section (5) of Section 43D puts a complete embargo on the powers of the Special Court to release an * accused on bail. It lays down that if the Court, 'on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure', is of the opinion that there are reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under*



Chapter IV and/or Chapter VI of the UAP Act is prima facie true, such accused person shall not be released on bail or on his own bond. It is interesting to note that there is no analogous provision traceable in any other statute to the one found in Section 43D(5) of the UAP Act. In that sense, the language of bail limitation adopted therein remains unique to the UAP Act.

18. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase - 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)- 'shall not be released' in contrast with the form of the words as found in Section 437(1) CrPC - 'may be released' - suggests the intention of the Legislature to make bail, the exception and jail, the rule.

19. The courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail. The 'justifications' must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, 'prima facie' standard, as a measure of the degree of



satisfaction, to be recorded by Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of 'strong suspicion', which is used by Courts while hearing applications for 'discharge'. In fact, the Supreme Court in Zahoor Ali Watali² has noticed this difference, where it said:

"In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act."

20. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal



Procedure or any other law for the time being in force on grant of bail.

21. On a textual reading of Section 43 D(5) UAP Act, the inquiry that a bail court must undertake while deciding bail applications under the UAP Act can be summarised in the form of a twin-prong test: 1) Whether the test for rejection of the bail is satisfied?

1.1 Examine if, prima facie, the alleged 'accusations' make out an offence under Chapter IV or VI of the UAP Act

1.2 Such examination should be limited to case diary and final report submitted under Section 173 CrPC;

2) Whether the accused deserves to be enlarged on bail in light of the general principles relating to grant of bail under Section 439 CrPC (tripod test')?

On a consideration of various factors such as nature of offence, length of punishment (if convicted), age, character, status of accused etc., the Courts must ask itself:

2.1 Whether the accused is a flight risk?

2.2. Whether there is apprehension of the accused tampering with the evidence?

2.3 Whether there is apprehension of accused influencing witnesses?

22. The question of entering the 'second test' of the inquiry will not arise if the 'first test' is satisfied. And merely because the first test is satisfied, that does not mean however that the accused is automatically entitled to bail. The



accused will have to show that he successfully passes the 'tripod test'. Test for Rejection of Bail: Guidelines as laid down by Supreme Court in Watali's Case.

23. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

- Meaning of 'Prima facie true' [para 23]: On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence*
- Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post- Charges - Compared [para 23]: 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.

- *Reasoning, necessary but no detailed evaluation of evidence [para 24]:*

The exercise to be undertaken by the Court at this stage--of giving reasons for grant or non-grant of bail--is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.

- *Record a finding on broad probabilities, not based on proof beyond doubt [para 24]: "The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."*

- *Duration of the limitation under Section*



43D(5) [para 26]: 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.

- *Material on record must be analysed as a 'whole'; no piecemeal analysis [para 27]: 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 analysing individual pieces of evidence or circumstance.*

- *Contents of documents to be presumed as true [para 27]: The Court must look at the contents of the document and take such document into account as it is.*

- *Admissibility of documents relied upon by Prosecution cannot be questioned [para 27]: The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence.....In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible.”*

8. Thus, from the aforesaid decision rendered by the Hon’ble Supreme Court, it can be said that the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report



or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are *prima facie* true. It is only if the test for rejection of bail is not satisfied that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence).

9. Keeping in view the aforesaid provisions of law and the decision rendered by the Hon'ble Supreme Court, now we would like to examine the case of the appellant and the allegation levelled against him in the papers of the charge-sheet. From the materials placed before us, it would emerge that the confessional statement of the appellant has been recorded under Section 164 of the Code before the concerned Magistrate. It is a specific case of the prosecution that the appellant arranged meeting with one Munna Lal with Md. Irfan and AK-47 rifle was obtained by the co-accused in Rs. 5.5 lakhs. It is also alleged against the appellant that he got Rs. 10,000/- out of the aforesaid transaction. It is also not in dispute, as stated by the appellant himself in paragraph 3 of the Memo of the Appeal, that there are antecedents against the appellant. Thus, from the papers of the charge-sheet and the materials placed before us, *prima facie*, case is made out against the appellant that he is



involved in the alleged activity. It is also the specific case of the prosecution that during the investigation it has been further disclosed that the accused person including the appellant supplied the arms to CPI (M) for carrying out subversive activities. CPI (M) is a terrorist outfit which is proscribed organization under UAPA and the appellant has been found to be one of the main accused persons who is in league with other accused persons Bajrang Shankar, Purushuttam Lal Rajak, Md Irfan and others and they were actively involved in carrying out the offences punishable under Section UAPA.

10. At this stage, it is also pertinent to note that co-accused namely, Bajrang Shankar preferred Criminal Appeal (DB) No. 704 of 2021 under Section 21(4) of NIA Act with a prayer that he may be released on bail. However, this Court vide order dated 29.08.2023 has dismissed the said application filed by the co-accused. Learned Advocates appearing for the parties submit that the aforesaid order has not been challenged by the said co-accused before the higher forum. Further, trial is already commenced and prosecution has examined 16 witnesses.

11. We have also gone through the reasoning recorded by the Special Court while rejecting the application submitted by the appellant and we are of the view that the concerned



Special Court has not committed any error while passing the impugned order.

12. Thus, when *prima facie* the accusations against the appellant are made out from the investigation papers, we are not inclined to entertain the present Appeal which has been filed for grant of bail. More particularly, in view of the bar provided under Section 43D (5) of UAPA.

13. Accordingly, the present Appeal stands dismissed.

(Vipul M. Pancholi, J)

(Sunil Kumar Panwar, J)

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