

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.759 of 2023

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

MD. NIYAZUR RAHMAN @ NIYAZUL RAHMAN @ GOLU S/O LATE
MD. ABDUL RASID @ ABDUL RASID R/O Village- Mirzapur Bardah, P.S-
Muffasil, Distt.- Munger.

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. The Under Secretary to the Govt. of India, N.I.A, Ministry of Home Affairs,
Delhi, CTCR Division North Block, New Delhi.

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Rajnish Kumar Singh, Advocate
For the Respondents	:	Km. Shashi Bala Verma, APP
		Mr. K.N. Singh, Senior Advocate, A.S.G.
		Mr. Manoj Kumar Singh, Spl. P.P. (NIA)
		Mr. Ankit Kumar Singh, Advocate
		Mr. Shivaditya Dhari Sinha, AC to ASG

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 28-06-2024

The present appeal has been filed under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as the 'NIA Act') for release of the appellant on bail.

2. The prosecution case, in brief, is that one Inspector Bindeshwari Yadav has lodged a written report dated 07.09.2018 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 Muffasil Police Station in the District of Munger, Bihar undr Sections 121, 379, 414 and 120B/34 of Indian Penal Code, Section 25(1A), 25(1AA), 25(1-B)(a) and Sections 26 and 35 of the Arms Act read with Section 39 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as U.A.P.A.) relating to recovery of 3 A.K.-47 weapons and arrest of two persons who were involved in supply of A.K.-47 weapons to Maoists and other criminals in various States from Army Armory, Jabalpur, Bhopal. Accordingly, the case is being registered as RC-31/2018/NIA/DLI dated 05.10.2018.

3. It is evident from the format of the First Information Report that all together 26 persons were named in the category of accused in the F.I.R. Appellant is shown as Accused No.2 in F.I.R. The appellant filed bail application in the pending trial being Special Case No.08 of 2018 before the learned Special Judge, N.I.A. Act, Patna, Bihar. However, the said bail application came to be dismissed vide order dated 21.06.2023 and, therefore, the appellant has preferred the present appeal wherein he has requested that he may be released on bail in connection with the aforesaid case.

4. Heard Mr. Rajnish Kumar Singh, learned



Advocate for the appellant, Dr. Krishna Nandan Singh, learned A.S.G. assisted by Mr. Manoj Kumar Singh, learned Spl. P.P. appearing for the National Investigation Agency.

5. Learned Advocate for the appellant has submitted that the appellant was arrested on 07.09.2018 from Bagdogra in connection with Muffasil P.S. Case No.168 of 2009, which was lodged due to family disputes under Section 307 of the Indian Penal Code. It is submitted that at the time of arrest, the police did not inform the appellant about Muffasil P.S. Case No.323 of 2018, which was registered on 07.09.2018. He was remanded in this case on 13.09.2018. At the time of arrest, nothing has been recovered from the conscious possession of the appellant. However, after a period of 78 days when the N.I.A. has taken over the investigation on 05.10.2018, one seizure list has been prepared on 30th November, 2018. The recovery has been shown from the house of the appellant at Lucknow from where two pisten rods of S.L.R. were recovered. It is submitted that at that time appellant was not present and he was in judicial custody. It is further submitted that as per the case of prosecution, two hand written letters of co-accused, Purushottam Lal Rajak were found in the said house. The said letters have been received by the brother of the appellant, i.e.,



co-accused Shamsheer Alam and in fact the appellant was not aware about the said letters.

5.1. Learned Advocate for the appellant further submits that on the basis of the statement of co-accused Purushottam Lal Rajak recorded under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), the prosecution has tried to implicate the appellant. It is further submitted that pursuant to the statement made by co-accused under Section 164 of the Code, the recovery was not made from the house of the appellant and the same was prior to the statement made by the co-accused. Even the seizure list is not as per the provisions of law. It is further submitted that N.I.A. has tried to implicate the appellant on the basis of the statement made by protected witnesses. Such a statement is weak piece of evidence.

5.2. Learned Advocate, therefore, urged that no prima facie case is made out by the prosecution against the appellant and, therefore, bar under Section 43D(5) of U.A.P.A. would not be attracted and, therefore, this Court has to apply 'tripod test', i.e., whether the accused is a flight risk, whether there is apprehension of the accused tampering with the evidence?, whether there is apprehension of accused influencing



witnesses.

5.3. It is submitted that accused is not a flight risk and there is no apprehension on the part of the prosecution that accused will tamper with the evidence or influence the witnesses.

5.4. Learned Advocate, at this stage, submitted that appellant is in custody since last five years and till date the prosecution has examined 32 witnesses and 100 witnesses are yet to be examined by the prosecution and, therefore, appellant be released on bail. Learned Advocate lastly submitted that though there are antecedents against the appellant, most of the cases have been filed after registration of the F.I.R. in question and, therefore, on that ground the bail application of the appellant may not be dismissed.

6. On the other hand, Mr. K.N. Singh, the learned A.S.G. has vehemently opposed the present appeal. At the outset, it is submitted that from the papers of the charge-sheet and the case diary, it is revealed that there is ample material against the present appellant and the prosecution-respondent has in fact made out prima facie case against the appellant. The learned A.S.G. has placed reliance upon the provision of Section 43D(5) of the U.A.P.A. and submitted that there is reasonable



ground for believing that the accusation against the appellant is prima facie true and, therefore, bar contained in the said provision would be applicable. Learned A.S.G., therefore, urged that on this ground alone, the present appeal be dismissed.

6.1. The learned A.S.G. has thereafter referred the averments made in affidavit filed on behalf of respondent no.2. It is submitted that in pursuance of material collected during investigation of Case Crime No.258/2018 dated 29.08.2018 P.S. Jamalpur District Munger, the local police on 07.09.2018 searched the house of accused Rizwana Begum on disclosure of her brother Shamsher Alam whereby and whereunder 03 A.K.-47 rifle alongwith other weapons has been recovered. It is further submitted that consequent upon recovery of 03 A.K.-47 rifle alongwith other weapons from the house of Rizwana Begum, a Case Crime No.323/2018, dated 07.09.2018 was registered at P.S. Muffasil, District Munger, Bihar under Sections 121, 379, 414, 120B, 34 of the Indian Penal Code, Sections 25(1A), 25(1AA), 25(1B)(a), 26, 35 of the Arms Act and Section 39 of U.A.P.A.

6.2. The learned A.S.G. further submits that the MHA vide its Order No. F. No.11011/65/2018/NIA dated 04.10.2018 of the CTCR Division, North Block, New Delhi



directed the N.I.A. to take up the investigation of aforesaid case. Accordingly, RC-31/2018/NIA-DLI was re-registered at P.S. NIA Delhi on 05.10.2018 under Sections 121, 379, 414, 120B and 34 of the Indian Penal Code, Sections 25(1A), 25(1AA), 25(1-B)(a), 26 and 35 of the Arms Act and Section 39 of the U.A.P.A.

6.3. It is further contended by the learned A.S.G. that during investigation, the recovery of AK-47 rifles from different places were made which have been stolen from COD, Jabalpur in connivance with accused persons. The investigation further disclosed that Purushottam 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. It is further contended that during his posting at Kibutu (Arunachal Pradesh) in year 2002, he came in contact with accused Niyazul Rahman (the appellant herein). The accused Niyazul Rahman disclosed before Purushottam Lal Rajak that he is from Munger where small arms are manufactured and sold, however, if SLR rifle or pistol (factory made) is made available then it could be sold at a higher price. Accordingly, the rate of SLR was decided as Rs.75,000/- per rifle. Accordingly, 9 SLR rifles were taken out from COD Jabalpur by the associate of Purushottam Lal Rajak



and further sold to the accused Niyazul Rahman (A-4) (the appellant herein).

6.4. Mr. Singh has also submitted that during posting of both accused, i.e., Purushottam Lal Rajak and Niyazul Rahman in Lucknow, Niyazul Rahman introduced his brother Shamsheer Alam and his brother-in-law Imran Alam to Purushottam Lal Rajak. In the said meeting, both Shamsheer Alam and Md. Imran Alam revealed that they can give good amount for AK-47 rifles, if provided and they entered into criminal conspiracy of procurement, supply and distribution of arms to other persons. It is also submitted that during the search of the house of accused Shamsheer Alam in the afternoon of 07.09.2018, certain incriminating articles/documents, contained in a yellow coloured polythene bag were recovered which also included two hand written letters of Purushottam Lal Rajak dated 25.05.2014 and 30.05.2014 in the name of Niyazul Rahman containing mobile number 8519025997, 8519026192 and 8821896869 also containing envelope of Speed Post in which addressee is Niyazul Rahman, Village Bardah, Munger. In the letter, it is mentioned by Purushottam Lal Rajak that after receipt of the letter, he may be contacted on above mobile numbers. This letter established the association of the accused



Purushottam Lal Rajak with accused Shamsheer Alam and Niyazul Rahman. It is further submitted by Mr. Singh that during investigation, the residential premises of accused Niyazul Rahman was searched at Sahadatganj, Lucknow and 2 Piston head/rod of SLRs were recovered which clearly indicate that he was actively involved in smuggling of arms and its spare parts. This fact is further corroborated with the disclosure made by the accused Purushottam Lal Rajak in his statement recorded under Section 164 of the Code.

6.5. It is contended that the conspiracy of procurement of arms from COD, Jabalpur, its supply and distribution has been established in the statement made under Section 164 of the Code of accused persons, namely, Purushottam Lal Rajak, Manoj Singh, Suresh Thakur and Bajrang Shankar. This fact has also been established with the statement of witnesses recorded under Section 164 of the Code. It is submitted that the arms were also being supplied to the cadres of CPI (Maoist) has been confirmed by a protected witness during the course of investigation. The CDR of mobile numbers of accused persons establishes that they were in contact with other accused persons.

6.6. It is further submitted that involvement of



Niyazul Rahman (the appellant herein) A-4 in the crime has been found to be true in investigation. Accordingly, the Charge Sheet under Sections 120B, 380, 414 of the Indian Penal Code, Sections 25, 26 and 35 of the Arms Act and Section 39 of the U.A.P.A. has been submitted on 05.03.2019 against the accused persons including Niyazul Rahman (the appellant herein) before the learned court of Special Judge, NIA, Patna. Accordingly, cognizance has been taken by the learned court on 25.03.2019.

6.7. The learned A.S.G. would thereafter contend that in the present case 5 charge-sheets have been filed. The concerned accused persons used to file discharge petitions one after another. Thus, filing of back to back discharge petitions by the various accused persons caused delay in framing of charges against the concerned accused. Thus, delay of more than three years was caused due to the aforesaid reason. However, now the charges were framed on different dates and thereafter on 18.10.2022 all the five special cases were amalgamated by the learned Special Judge. It is further submitted that till date, as per his information, approximately 40 witnesses have been examined.

6.8. At this stage, the learned A.S.G. has also pointed out that there are antecedents reported against the



appellant. It is submitted that appellant himself has disclosed the said aspect in para-3 of the memo of appeal from which it is revealed that 8 F.I.Rs. have been registered against him. It is also contended that the prosecution is having apprehension that if the appellant is released on bail, he will not be available for facing the trial and there are all chances that he will tamper with the witnesses and evidence.

6.9. The learned A.S.G. has also pointed out that co-accused Bajrang Shankar had filed Criminal Appeal (DB) No.704 of 2021, Manoj Kumar Singh had filed Criminal Appeal (DB) No.563 of 2023 and Rajiv Ranjan Singh had filed Criminal Appeal (DB) No.633 of 2021 with a prayer that they may be released on bail. However, this Court vide separate orders dismissed all the aforesaid appeals, copies of the said orders have been produced by the learned A.S.G.

6.10. The learned A.S.G., therefore, urged that when prima facie case is made out against the appellant, the present appeal may not be entertained.

7. We have considered the submissions canvassed by learned counsel appearing for the parties. We have also perused the materials placed on record and the case diary as well as the papers of the charge-sheet and the statement of the



protected witnesses separately supplied by the learned A.S.G. It would reveal from the record that appellant is shown as Accused No.2 in the F.I.R. It transpires that local police searched the house of accused Rizwana Begum (sister of the appellant) on disclosure of her brother Shamsheer Alam (brother of the appellant) whereby and whereunder 03 A.K.-47 rifle alongwith other weapons has been recovered. Case was registered at P.S. Muffasil, District Munger and thereafter N.I.A. took over the investigation of the said case pursuant to the order passed by MHA and the said FIR was re-registered as RC-31/2018/NIA-DLI. It further transpires that during search of house of the accused Shamsheer Alam (brother of the appellant) certain incriminating articles/documents were recovered which also included two hand written letters of Purushottam Lal Rajak written to the appellant herein containing mobile numbers in which the addressee is the appellant. Further, during the investigation, the residential premises of the appellant was searched at Lucknow and 2 pisten rods of S.L.Rs. were recovered. We also perused the statement given by co-accused Purushottam Lal Rajak recorded under Section 164 of the Code. From the charge-sheet papers, it would prima facie reveal that appellant is involved in commission of the alleged offences and



there are reasonable grounds for believing the same. Thus, we are of the view that as per provisions contained in Section 43D(5) of the U.A.P.A., the prayer for bail made by the appellant cannot be entertained.

8. At this stage, it is also relevant to note that even as per the case of the appellant himself, there are criminal antecedents and 8 F.I.Rs. have been registered against him. The said aspect has been stated in para-3 of the memo of appeal. Further, the learned A.S.G. has shown apprehension that if the appellant is released on bail, he would not be available for facing the trial and there are all chances that he will tamper with the evidence and the witnesses.

8.1. Further, the learned A.S.G. has specifically contended that because of the various discharge applications filed by different accused, delay has been caused. However, now approximately 40 witnesses have been examined by the prosecution. Thus, we are of the view that merely because the appellant is in custody since last five years, he cannot be released on bail. It is also relevant to observe that the appeals filed by three other co-accused, namely, Bajrang Shankar, Manoj Kumar Singh and Rajiv Ranjan Singh have been dismissed by this Court and the learned Advocate for the



appellant fairly submitted that till date the said accused have not challenged the said orders before the Hon’ble Supreme Court.

9. In view of the discussions aforesaid, the instant appeal deserves to be dismissed and, accordingly, the same is dismissed.

(Vipul M. Pancholi, J.)

(Ramesh Chand Malviya, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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