

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.948 of 2023

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

Md. Irfan @ Md. Irfan Alam S/O Late Md. Basir @ Kalandar R/O Mirzapur
Bardah, P.S- Muffasil, Distt.- Munger.

... .. Appellant

Versus

1. The State of Bihar
2. The Under Secretary To The Govt. Of India, N.I.A, Mha, Delhi, Ctr
Division, North Block, New Delhi New Delhi.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Rajnish Kumar Singh, Advocate
For the Respondent	:	Km. Shashi Bala Verma, A.P.P.
For the NIA	:	Dr. K.N. Singh, Senior Advocate (A.S.G.)
	:	Mr. Shivaditya Dhari, Advocate
	:	Mr. Arvind Kumar, Spl. P.P.
	:	Mr. Paritosh Parimal, Advocate
	:	Mr. Pramod Kumar, PP, NIA

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

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

Date : 26-07-2024

Heard Mr. Rajnish Kumar Singh, learned
Advocate for the appellant, Km. Shashi Bala Verma, learned
A.P.P. for the Respondent-State, Dr. K.N. Singh, learned
A.S.G. for the NIA assisted by learned Advocates Mr.
Shivaditya Dhari, Mr. Paritosh Parimal and learned Spl.P.P.,
Mr. Arvind Kumar for the NIA.



2. The present appeal has been filed by the appellant 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 against the order dated 16.08.2023, passed by the learned Court of Special Judge, NIA, Patna, Bihar in NIA Special Case No. 08 of 2018 arising out of R.C. No. 31/2018/NIA – DLI dated 05.10.2018 under Sections 121, 379, 414, 120B & 34 of the Indian Penal Code (hereinafter referred to as the 'IPC'), under Sections 25(1A), 25(1AA), 25(1B)(a), 26 & 35 of the Arms Act, under Section 39 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'U.A. (P).A. ') in connection with Munger Muffasil Police Station Case No. 323 of 2018, Munger, Bihar dated 07.09.2018.

3. 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 FIR No. 323 of 2018 dated 07.09.2018 at Muffasil Police Station in the District of Munger, Bihar under Sections 121, 379, 414, 120(B) and 34 of the IPC, under Sections 25(1A),



25(1AA), 25(1B)(a), 26 & 35 of the Arms Act and under Section 39 of the UAPA, 1967 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.

4. In the formal FIR, all together 26 accused were named and the present appellant is shown as accused no. 4 in the FIR. The appellant had filed bail application before the Special Court, NIA on three occasions. Lastly, he filed bail application in Special Case No. 08 of 2018 arising out of R.C. No. 31/2018/NIA – DLI dated 05.10.2018. The said bail application came to be rejected by the Special Judge, NIA, Patna *vide* order dated 16.08.2023, against which the appellant has preferred the present appeal.

5. Learned Advocate for the appellant has mainly contended that though appellant is named in the FIR, he has been implicated on the basis of the statement of co-accused Manoj Kumar Singh. It is submitted that statement of the said co-accused was recorded under Section 164 of



the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') before the concerned Magistrate. However, thereafter, the said co-accused has retracted the said statement. Learned Advocate for the appellant has referred the confessional statement of co-accused Manoj Kumar Singh. After referring to the same, it has been contended that in the said statement co-accused has referred name of one Munna Singh. However, surprisingly, the prosecution has not charge-sheeted the said person i.e., Munna Singh. At this stage, learned Advocate submits that, as per the case of the prosecution, during the search of the house of the appellant document with regard to the purchase of land in the name of wife of the appellant was recovered. In fact, the said land was purchased in the year 2016, much prior to the registration of the FIR. It is further submitted that there is a reference in the papers of the charge-sheet against the appellant that from the CDR of the mobile phones of the wife and the mother of the appellant, which were seized from the house of the appellant, it was revealed that the appellant had talked with two other co-accused, namely, Imram Alam and Shamsheer Alam. It has been contended



that both the aforesaid co-accused are near relatives of the appellant. Except the aforesaid, there is no other recovery from the conscious possession of the appellant and no incriminating material was found from the possession of the appellant.

6. Learned Advocate for the appellant would thereafter contend that there is a delay in proceeding with the trial against the appellant. In fact, prosecution intends to examine 135 witnesses during the course of the trial out of which till today, the prosecution has examined 43 witnesses. Therefore, the trial against the appellant would not be over in near future. At this stage, it is pointed out from the record that the appellant is in custody for approximately five years and, therefore, on this ground, the appellant be released on bail.

6.1 Appellant has placed reliance upon the recent order dated 03.07.2024 passed by the Hon'ble Supreme Court in the case of *Javed Gulam Nabi Shaikh vs State of Maharashtra and Anr. passed in Criminal Appeal No. 2787 of 2024*. It is submitted that in the said case, the Hon'ble Supreme Court has considered Article 21 of the



Constitution of India and also observed that if there is a delay in proceeding with the trial, the concerned accused is required to be released on bail. Learned Advocate, therefore, urged that the appellant be released on bail on this ground.

7. Learned Advocate would thereafter submit that now the charge has been framed against the appellant for the offences punishable under Sections 121, 379, 414, 120B & 34 of the IPC, under Sections 25(1A), 25(1AA), 25(1B)(a), 26 & 35 of the Arms Act and under Section 39 of the UA(P) Act, 1967. It is submitted that maximum punishment prescribed for the offence punishable under Section 25(1A) of the Arms Act is fourteen years and the appellant is in custody for approximately five years and, therefore, on this ground, the appellant be enlarged on bail.

8. Learned Advocate lastly submitted that though there are seven to eight FIRs registered against him, most of the FIRs have been filed against him after the registration of the present FIR and, in some of the cases, appellant has been released on bail.

9. Learned Advocate, therefore, urged that the present appeal be allowed, impugned order passed by the



Special Judge, NIA, Patna be quashed and set aside and thereby the appellant be released on bail.

10. On the other hand, learned A.S.G. for the Respondent-NIA has vehemently opposed the present appeal. Learned A.S.G. for the Respondent-NIA has referred the averments made in the counter-affidavit filed on behalf of the respondent no. 2. After referring to the same, learned A.S.G. has also referred the copy of the charge-sheet filed against the appellant and some of the co-accused, copy of which has been placed on record at Annexure-A with the counter-affidavit. Learned A.S.G. has more particularly referred the paragraph nos. 16.29, 16.30 and 16.35 of the counter of the charge-sheet. Learned A.S.G. has pointed out the role attributed to the present appellant. It is submitted that the statement of co-accused Manoj Kumar Singh came to be recorded under Section 164 of the Code before the Magistrate wherein he has specifically disclosed the role played by the present appellant. It is further submitted that during the search, certain material connecting the appellant with the other co-accused was also recovered and from the CDR of the mobile phones which were seized from the



premises of the appellant, it was revealed that the appellant was in contact with the other co-accused, including Imram Alam and Shamsher Alam. Learned A.S.G. for the Respondent, therefore, urged that the Respondent prosecution has made out *prima facie* case against the appellant. At this stage, learned A.S.G. has referred the provisions contained in Section 43D(5) of UAPA and submitted that when *prima facie* case has been made out by the prosecution, this Court may not release the appellant on bail.

11. Learned A.S.G. for the Respondent-NIA would thereafter submit that out of 135 witnesses, the prosecution has already examined more than 43 witnesses and the next date before the Special Judge, NIA Patna is 29.07.2024 and summonses were issued to seven witnesses. Learned A.S.G. therefore, contended that there is no delay in proceeding with the trial, as contended by learned Advocate for the appellant, and the trial would be over in near future.

12. Learned A.S.G. for the Respondent further submits that there are eight antecedents against the present



appellant and, therefore, on this ground also, case of the appellant may not be considered.

13. At this stage, learned A.S.G. for the Respondent has placed on record orders passed by this Court whereby this Court has rejected the appeal filed by co-accused namely, Bajrang Shankar, Manoj Kumar Singh, Md. Niyazur and Rizwana Begum. It is submitted that this Court has dismissed the appeals filed by the aforesaid co-accused and till date the aforesaid orders are not set aside by the Hon'ble Supreme Court. Learned A.S.G., therefore, urged that the present appeal be dismissed.

14. In reply to the aforesaid contention, learned Advocate for the appellant submits that though this Court has rejected the appeal filed by four co-accused, the case of the present appellant is on different footing because in all the aforesaid cases their confessional statement were recorded under Section 164 of the Code.

15. 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 copy of the charge-sheet and the other



documents supplied by the learned Advocates for the parties. From the material placed on record, it would emerge that the appellant is shown as accused no. 4 in the FIR and in the papers of the charge-sheet he is shown as accused no. 7. It is the case of the appellant that he has been implicated on the basis of the statement of the co-accused Manoj Kumar Singh. We have verified the statement of the said co-accused which was recorded by the learned Magistrate under Section 164 of the Code. In the said statement, the said co-accused has specifically disclosed about the role played by the present appellant. From the papers of the charge-sheet, the Investigating Agency has also stated in paragraph nos. 16.29, 16.30 and 16.35 with regard to the role of the present appellant which read as under :-

16.29. During investigation searches were also conducted in the residential premises of Md. Irfan (A-7) from where in voice of purchase of mobile phone having details of IMEI number and some bank account details were found and were scrutinized. During the scrutiny of bank account number 31936635824 maintained in the name of accused Irfan Alam (A-7) at SBI Bardah it revealed that a sum of Rs. 8,65,000/- was transferred to account no. 30094753789 held in the name of Arjun Panjiyar on 26.02.2016. It further disclosed that from the perusal of the same account of accused Irfan Alam (A-7). The said transaction is a suspicious one and the



same was verified with the concerned account holder Arjun Panjiyar to whom the amount was transferred. It was disclosed that the said Arjun Panjiyar received Rs. 8,65,000/- against the sale of 187.5 Dismil land, which was registered on 29.02.16 in the name of Kashmira Begum w/o-accused Irfan Alam (A-7) R/o Mirzapur Bardah, Dist- Munger.

16.30. Investigation further disclosed that during the course of search 02 invoices showing the purchase of mobile phone from Ringing tone and Amar Mobile Munger were recovered and seized which contained the IMEI no. 911486402798598 & 357151086450004. It further revealed that accused Irfan Alam (A-7) used mobile number 7631732255 & 6204638612 against these IMEIs, held in the name of Sanjeeda Begum (mother of accused Irfan (A-7) and 6204638612 in the name of Kashmiri Begum (wife of Irfan (A-7)) were purchased. These 02 mobile nos. also have been found in contact with other mobile nos. of the accused persons involved in this case, which establishes that the accused Irfan Alam (A-7) was using this number for making contacts with the other accused including accused Shamsher Alam (A-2) and Md. Imran Alam (A-3) During the course of search in the house of Md. Imran Alam (A-3), one cash receipt of Magic World Azad Chauk, Munger having IMEI no. 865245039160515 was recovered and seized and during the technical analysis the said IMEI no was of mobile no. 8809995678, 7488588472. Further during search one diary containing various phone numbers and some transactions was recovered.

16.35. Accused Manoj Kumar Singh (A-15) preferred a confessional statement u/s 164 CrPC. In the statement, he informed that accused Irfan Alam (A-7) sold two AKs through



him to one Munna Singh in 5.5 Lacs each. The statement brought out the role of accused Irfan Alam (A- 7). The CDR analysis of the phones used by A-7 also found that he was in constant contact with A-2 and A-3, which can be seen in the pre para.

16. Thus, from the aforesaid material, it can be said that the prosecution has made out a *prima facie* case against the appellant. At this stage, we would like to refer provisions contained in Section 43D(5) of UAPA which provides as under :-

“43(D)(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.”

17. Thus, when the *prima facie* material has been pointed out by the prosecution against the appellant, we are of the view that the aforesaid provision would be



attracted in the present case also.

18. At this stage, we would like to observe that prosecution intended to examine 135 witnesses during the course of the trial. It is specifically contended by learned A.S.G. for the Respondent-NIA that 43 witnesses have been examined till date and the next date of hearing is 29.07.2024. It is specifically contended by the learned A.S.G. that summonses were also issued to the seven witnesses who will be examined on the next date date i.e., from 29.07.2024 to 01.08.2024.

19. At this stage, we would like to refer the order dated 03.07.2024 passed by the Hon'ble Supreme Court in the case of ***Javed Gulam Nabi Shaikh*** (supra). From the aforesaid order, it is revealed that the Hon'ble Supreme Court has considered the facts of the said case in paragraph no. 7 wherein the Hon'ble Supreme Court has stated that in the said case, the charge was not framed by the trial court though the said appellant/accused was in custody for four years. As observed hereinabove, in the present case, charge has been framed in the year 2022 and till date the prosecution has already examined approximately 43



witnesses and, therefore, in the facts of the present case, we are of the view that the aforesaid decision would not render any assistance to the present appellant.

20. It is also not in dispute that there are seven to eight antecedents of the present appellant. However, it has been contended by the learned Advocate for the appellant that all the said FIRs have been filed after registration of the present FIR and he has been released in some of the cases. However, the fact remains that seven to eight FIRs have been registered against the appellant.

21. We have also gone through the orders passed by this court in the case of co-accused Bajrang Shankar, Manoj Kumar Singh, Md. Niyazur and Rizwana Begum. Till date, the aforesaid orders are not interfered with by the Hon'ble Supreme Court. We have also gone through the impugned order passed by the Special Judge, NIA, Patna and in view of the aforesaid facts and circumstances of the present case, we are of the view that no interference is required in the impugned order passed by the concerned Special Court. Hence, we are not inclined to release the appellant on bail.



22. Accordingly, the present appeal stands dismissed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

GKS/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	31.07.2024
Transmission Date	31.07.2024

