

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1196 of 2023

Arising Out of PS. Case No.-26 Year-2023 Thana- NIA District- Patna

Binod Mishra @ Vinod Kumar Mishra @ Vinod Mishra, aged about 60 years, male, Son of Late Jag Narayan Mishra, resident of Village- Hudrahi, P.S.- Tekari, District- Gaya (Bihar).

... .. Appellant/s

Versus

The Union of India through National Investigation Agency, New Delhi, Branch Office Patna, at Patna, Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Yogesh Chandra Verma, Sr. Adv. Mr. Aman Vishal, Adv. Ms. Leelawati Kumari, Adv.
For the UOI (NIA)	:	Mr. K.N. Singh, ASG Mr. Shivaditya Dhari Sinha, AC To ASG Mr. Manoj Kumar Singh, Spl. PP, NIA

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)
Date : 28-02-2024

Heard Mr. Yogesh Chandra Verma, the learned Senior Advocate, assisted by Mr. Aman Vishal, the learned Advocate, for the appellant/applicant, namely, Binod Mishra @ Vinod Kumar Mishra @ Vinod Mishra and Dr. K.N. Singh, the learned Additional Solicitor General, assisted by Mr. Manoj Kumar Singh,



learned Spl. PP, for the National Investigation Agency.

2. The appellant/applicant had prayed for anticipatory bail before the learned Special Judge, N.I.A., Patna in Special Case No. 07 of 2023/R.C. No. 26 of 2023, which was rejected on the ground of there being a bar in entertaining any anticipatory bail application in view of the provisions contained in Section 43D(4) of the Unlawful Activities (Prevention) Act, 1967.

3. The F.I.R. *vide* Tekari P.S. Case No. 480 of 2023, dated 10.08.2023, refers to the arrest of the two of the *Maoist* leaders, namely, Pramod Mishra and Anil Yadav from the house of the appellant. News had been filtering in the Department that over a period of time, the afore-noted two persons were attempting to upgrade and strengthen the organization and were in a lookout for committing some crime for making their presence felt.

4. In course of investigation, based on an



information that the aforesaid two persons are residing in the house of the appellant, a raid was conducted and both of them, namely, Pramod Mishra and Anil Yadav were arrested. From their possession, many things were recovered, but the only incriminating materials were the four letters, which were aimed at strengthening the banned organization, and four memory card readers, about which the arrested persons had disclosed that those contained materials regarding the organization. The arrested persons disclosed that they were members of the core committee of the organization and one of them was Chief of the Eastern Regional Bureau, whereas the other was a Sub-Zonal Commander.

6. The allegation against the appellant/applicant in the F.I.R., therefore, is that he, on a regular basis, harboured the extremists and helped them in their activities.

7. While praying for anticipatory bail, Mr. Verma, the learned Senior Advocate, has submitted that



assuming every allegation in the F.I.R. to be true, no offence under any one of the sections of the Unlawful Activities (Prevention) Act, 1967 could at all be said to have been made out as against the appellant. Assuming that two members of the banned outfit were arrested from his house, that would not lead to the only inescapable inference of the appellant harbouring such extremists or helping them out in their endeavours. One of the arrested persons is, admittedly, related to the appellant.

8. In this case, Mr. Verma has further asserted that *charge-sheet* has been submitted against the arrested accused persons, but during the entire course of investigation, no material could be collected against the appellant for justifying his prosecution under the Unlawful Activities (Prevention) Act, 1967.

9. It has further been submitted that for the statutory bar for entertaining anticipatory bail application in cases under Unlawful Activities (Prevention) Act, 1967



to apply it is extremely essential that the offence is made out from the F.I.R. and the materials collected during the course of investigation.

10. The learned Additional Solicitor General has advanced countervailing arguments that the whole premise of the appellant is based on an incorrect appreciation of facts. The contribution of the appellant to the cause of the two arrested persons is not to be taken lightly. The evidence is required to be collected that the appellant not only made available his house to the extremists, knowing fully well their vocation and their purpose in life, but also gave them active support. These facts would require a thorough investigation.

11. It has further been argued by Mr. Singh, the learned ASG that only because of the one of the arrested accused persons, said to be an extremist, is related to the appellant, that would not make the case as against the appellant absolutely groundless. The fact that the house of the appellant was used as a place of



safety/stay for the extremists could be the starting point of investigation as against the conduct of the appellant. Under such circumstances, the bar of Section 43D(4) of the Unlawful Activities (Prevention) Act, 1967 shall apply to the case of the appellant *proprio vigore*.

12. After having heard the learned counsel for the parties, we find that though the accusation against the appellant, at present, is only rudimentary and inferential, but it cannot be stated that the case is totally groundless so far as the accusation against the appellant is concerned. It would require a thorough investigation to unravel the actual part played by the appellant.

13. Thus, it cannot be said that no case can at all be said to have been made out for the appellant to tide over the bar of Section 43D(4) of the Unlawful Activities (Prevention) Act, 1967.

14. For the afore-noted reasons, we find this appeal against the rejection of anticipatory bail of the



appellant to be non-maintainable. The learned Special Judge has rightly rejected the application for anticipatory bail.

15. The appeal is dismissed.

16. After having said that, we must observe that in case the appellant/applicant surrenders and seeks bail, the Special Court shall look into all the circumstances and shall pass orders in accordance with law, without being prejudiced by the fact that the present appeal has not been entertained by this Court.

(Ashutosh Kumar, J)

(A. Abhishek Reddy, J)

Praveen-II/-

AFR/NAFR	NAFR
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