

17.01.2024
Sl. No.22
akd
[Rejected]

C. R. A. (DB) 347 of 2023

In Re: An appeal under Section 21(4) of the National Investigation Agency Act, 2008 filed on 17.10.2023 in connection with NIA Case No.1 of 2022 corresponding to NIA Crime No. RC-03/2022/NIA/DLI dated 25.01.2022 under Sections 120B/109/201 of the Indian Penal Code and Sections 3/4/6 of the Explosive Substances Act.

And

In Re: ***Samar Sankar Mondal***

... .. Appellant

Mr. Milon Mukherjee .. Sr. Advocate
Mr. Biswajit Manna

... .. for the appellant

Mr. Arun Kumar Maiti
Mr. Bhaskar Prosad Banerjee
Mr. D. Tandon

... .. for the NIA

1. It is submitted on behalf of the appellant that the uncontroverted allegations do not make out a case of threat to national security. No explosives were found from the possession of the appellant. Death occurred while co-accused were preparing bombs and was unintentional. In fact there is no charge of murder in the charge sheet. Evidence collected against the appellant in course of investigation are sketchy and his complicity is founded on mere surmises and conjectures. Prosecution proposes to examine 78 witnesses and there is no possibility of conclusion of trial in the near future. Accordingly, he prays for bail.
2. Learned Advocate for the National Investigation Agency (NIA) opposes the prayer for bail and submits appellant is the kingpin who had conspired with other co-accused to illegally collect explosives and manufacture bombs. During the illicit manufacture of bombs, a bomb exploded and one of them expired. There are ample evidence showing patent encouragement of the appellant to the illegal activity

of preparation of bombs. Bombs were stored so that appellant may perpetuate domination in the area and eliminate political opponents. Appellant is resorting to subterfuges to delay the trial. In the event he is released on bail, it shall have adverse impact on witnesses particularly the protected witnesses.

3. We have given anxious consideration to the submissions made at the Bar.
4. On 03.01.2022 a violent explosion took place in the house of a co-accused viz. Kankan Karan. As a result, one of their associates viz. Anup Das expired. On preliminary enquiry it came to light Kankan Karan and others had illegally amassed large volume of explosives and were preparing bombs. As the allegations involve offences under the Explosives Act, investigation was taken over by the National Investigation Agency (NIA).
5. In course of investigation, protected witnesses viz. 'A', 'B' & 'C' were examined. They claimed appellant who was the Pradhan of the Gram Panchayat had close association with Kankan Karan and others and on his instruction co-accused were preparing bombs in order to dominate the area. Call Detail Records (CDRs) collected during investigation show appellant had made frequent telephonic conversations with co-accused and was also present near the place of occurrence. It has also come to light that the appellant after the occurrence actively assisted the co-accused and ensured their medical treatment in a private hospital.
6. Analysis of the evidence shows that the conspiracy charge against the appellant is primarily based on the following facts :-
 - (a) Appellant is a political leader and the Pradhan of the Gram Panchayat. He had close association with co-accused viz. Kankan Karan who belonged to the same political party.

- (b) A large volume of explosives had been stored in the house of the said Kankan Karan and he along with his associates were actively manufacturing bombs.
 - (c) Statements of protected witnesses viz. 'A', 'B' & 'C' prima facie show appellant was aware of such activity and had undertaken this venture through his henchman viz. Kankan Karan to dominate the area.
 - (d) Call Detail Records (CDRs) collected during investigation establish frequent telephonic conversations between the parties.
 - (e) After the occurrence the appellant had sought to protect the co-accused and had arranged for their medical treatment in a private hospital.
7. These facts prima facie implicate the appellant in the crime.
 8. Proceeding is poised at a delicate stage namely, consideration of charge. Three protected witnesses who are most vulnerable are yet to be examined. At this stage, release of the appellant on bail may have adverse impact on the progress of trial and would aggravate the vulnerability of the protected witnesses.
 9. Keeping in mind these facts, we are not inclined to grant bail to the appellant at this stage.
 10. The application for bail is thus rejected.
 11. Trial court is directed to consider the issue of framing of charge including the prayer for discharge of the appellant within seven days from the next date fixed before the said court. In the event the court proceeds to frame charge against the appellant, we are of the opinion in order to protect the protected witnesses viz. 'A', 'B' & 'C' they may be examined at the earliest i.e. not later than three months from the date of framing of charge.

12. We make it clear that the observations made by us in the order are tentative and shall not have any bearing in course of the proceedings before the trial court which shall be considered independently and in accordance with law.

13. Parties shall communicate a copy of this order to the trial court for due compliance.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)