



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL No. 318 OF 2023.

Biccha s/o Chamru Matthami,
Aged 35 years, Occupation -
Agriculture, resident of Aldandi,
Tahsil Bhamragad, District
Gadchiroli (Maharashtra)
at present Lodged at
Central Prison, Nagpur.

... **APPELLANT.**

VERSUS

State of Maharashtra,
through P.S.O. Police
Station Sironcha, Tahsil
Sironcha, District Gadchiroli.

... **RESPONDENT.**

Mr. H.P. Lingayat, Advocate for the Appellant.
Mr. M.J. Khan, Addl.P.P. for the Respondent.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

CLOSED FOR JUDGMENT ON : MARCH 28, 2024.
JUDGMENT PRONOUNCED ON : APRIL 16, 2024.

JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Admit.

By consent of the learned Counsel for the parties, the Appeal is taken up for final disposal.

2. By this appeal filed under Section 21[3] of the National Investigating Agency Act, 2008 the appellant – Biccha Matthami has called in question the impugned order of rejection of bail dated 14.02.2023 passed below Exh.24 in Sessions Case No.93/2020 by the Additional Sessions Judge, Gadchiroli.

3. The learned Counsel appearing for the appellant has strongly assailed the impugned order by contending that in absence of any material to hold prima facie involvement of the appellant, the trial Court has declined to grant bail merely by quoting a statutory rider in terms of Section 43-D[5] of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as “the UAP Act” for short). It is submitted that name of the appellant was neither

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mentioned in the first information report, nor there are allegations that the appellant was indulging into financial activities, nor there is any material to hold that he is harboring naxalities. According to the appellant, nothing has been seized at his instance, nor he was found attending the meeting with the naxalities. In short the material produced by the prosecution does not make out a case to form an opinion that there are reasonable grounds for believing a prima facie case against the appellant.

4. The learned Addl.P.P. appearing on behalf of the sole respondent State has defended the impugned order by stating that the material collected during the course of investigation is sufficient to show the involvement of the appellant. Particularly our attention has been drawn to the disclosure statement of co-accused Samma, and the statement of witness Arjun to contend that the involvement of the appellant is evident. Concededly besides these two items, the State is unable to point out any other circumstance connecting the appellant with the charged offences.

5. We are well aware about the statutory rider under the UAP Act in case of grant of bail. The learned Addl.P.P. has relied on the decision of Supreme Court in case of **Gurwinder Singh .vrs. State of Punjab and another – Criminal Appeal No.704/2024** decided on **07.02.2024**, to contend that under UAP Act, bail is an exception and denial is a rule. We have gone through the said decision and noted the contents. Moreover, our attention has been invited by the learned Addl.P.P. to the decision of this Court in case of **Adv. Surendra Pundalik Gadling .vrs. State of Maharashtra – 2023 All MR (Cri) 2033**, wherein after considering various pronouncements, this Court declined to grant bail.

6. As a matter of fact, on the basis of emerging facts we have to take a call, rather to form an opinion about the existence of reasonable ground to believe that the accusation made is prima facie true. The prosecution case in brief is that on 02.06.2020, the police have received secret information that a tendu leaf contractor from Telangana was about to send huge amount to naxalities at Gadchiroli. Accordingly the police had laid trap and seized one

Scorpio vehicle with huge cash of Rs.1.20 Crores. Two persons were apprehended from whom it was revealed that the amount was sent by a contractor namely Mohd. Miya. Apparently, neither the appellant was named nor having reference about his role in the said report. The police have conducted investigation and filed charge sheet.

7. The prosecution lays hand only on two circumstances; Firstly, we have been taken through the memorandum of statement of co-accused Samma recorded by the police in terms of Section 27 of the Indian Evidence Act. He has stated that on and often naxalities used to visit their village to whom they were providing food items. He stated that he himself along with the appellant Biccha and Firangi used to assist them. Further he disclosed that he along with the appellant and others have concealed the items which were given by the naxalities for hiding in jungle area. It was followed by seizure of items which were seized at the instance of Samma. Neither it was a disclosure statement of the appellant, nor at his instance anything was seized. The inadmissible part of the

statement only conveys that the appellant was also assisting them. Assuming the statement as it is, still we are unable to pursue as to what role was assigned to the appellant.

Secondly, the State is laying hand on the statement of one Arjun Vidpi. He has stated that at the instance of one Diwanji, he called the manager Lumaji Waghare at the house of Sarju Mattami. When he went to said place, he saw that the accused / appellant was present and during talk he learn that one naxalite was about to meet them. Again we are unable to find anything to be inferred from such vague statement regarding positive act of the appellant. Vague reference of presence of the accused at some house does not prima facie make out any ground to show his complicity.

8. True Section 43-D[5] of the UAP Act imposes restriction in granting bail. Unless the court is satisfied that there are no reasonable grounds to believe existence of prima facie case the accused is not entitled for bail. We have examined the above material to find out existence of a prima facie case. The prosecution is unable to point out any other material to show the complicity of

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the appellant with the crime. Though it is contended that the appellant was connected with terrorist gang and was indulging in terrorist activities, however, the prosecution is unable to point out any material to that extent. Even if the material collected during the course of investigation is accepted, it is not possible to form an opinion that there are reasonable grounds for believing that the accusation made against the appellant to constitute the offence under the UAP Act are prima facie true. We have examined the broad probabilities regarding involvement of the accused in commission of crime, but, unable to accept prima facie case. In consequence, the statutory fetter under Section 43-D[5] of the UAP Act would not apply. The trial will take its own time for conclusion. In the result the impugned order is liable to be quashed and set aside. We deem it appropriate that the trial Court would be in a better position to suitably impose the conditions for grant of bail considering the facts and circumstances. In view of that, we pass the following order.

ORDER

- (i) Criminal Appeal is allowed and disposed of.
- (ii) The impugned order dated 14.02.2023 passed below Exh.24 in Sessions Case No.93/2020 by the Additional Sessions Judge, Gadchiroli is hereby quashed and set aside.
- (iii) The trial Court is directed to forthwith pass appropriate order of bail by imposing suitable conditions which it deems fit.

JUDGE

JUDGE