



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.224

CRA-D-320-2024 (O&M)

Date of decision : 10.07.2024

Daler Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr.Bhanu Pratap Singh, Advocate, for the appellant.

Mr.Jastej Singh, DAG, Punjab.

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DEEPAK SIBAL, J. (Oral)

(1) FIR No.120 dated 10.09.2023 under Section 25 of the Arms Act, 1959 (for short, the Act) was registered at Police Station Khuian Sarwar, District Fazilka against Sharanjeet Singh and William Masih. The said FIR was based on the recovery of 02 country-made pistols, 03 magazines and 20 live cartridges from the accused therein. Sharanjeet Singh and William Masih were arrested and their questioning revealed that the recovered arms and ammunition had been supplied to them by Sehajpreet Singh @ Nirvair Singh and Kailash Khichar. Accordingly, Sehajpreet Singh @ Nirvair Singh and Kailash Khichar were also nominated as accused in the aforesaid FIR and Section 25(7) of the Act was added. On 25.10.2023 Sehajpreet Singh @ Nirvair Singh was arrested from the Indira Gandhi International Airport, New Delhi. His questioning revealed that he, alongwith Amarjeet Singh, Daler Singh (the petitioner), Gurpreet Singh, Sharanjeet Singh and William Masih were all conspiring to kill RSS leaders for which they had also arranged weapons. Sehajpreet Singh further disclosed that weapons (other than the one which had already been recovered) had been concealed and he led to the recovery of one pistol .9 mm, one pistol .30 bore and magazines alongwith live cartridges. On the basis of the afore evidence, the petitioner, alongwith others, was also arrayed as accused. Offences



under Sections, 17, 18 and 20 of Unlawful Activities (Prevention) Act, 1967 (for short, 1967 Act) were also added.

(2) Thereafter, the appellant filed an application under Section 438 Cr.P.C. before the Sessions Judge at Fazilka seeking therein anticipatory bail on the dismissal of which he has knocked the doors of this Court through the instant appeal.

(3) Learned counsel for the parties have been heard.

(4) At the outset, learned State counsel refers to Section 43D(4) of the 1967 Act to question the maintainability of the instant appeal filed under Section 438 Cr.P.C. In support of his objection, reliance is placed on a judgment of the Supreme Court dated 16.03.2020 passed in a Special Leave to Appeal (Criminal) Nos.1916/2020-*Anand Teltumbde vs. The State of Maharashtra and others*.

(5) In *Anand Teltumbde's* case (supra) the Supreme Court has held as follows: -

“We have not mentioned the facts in detail, as requested by the learned counsel for the petitioner(s).

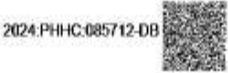
However, we are satisfied that in view of the provisions contained in Section 43D(4) of the Unlawful Activities (Prevention) Act, 1967, which exclude the operation of Section 438 of the Cr.P.C. no case is made out to exercise the powers under Section 438 Cr.P.C. Section 43D(4) is extracted hereunder: -

“Nothing in section 438 of the code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.”

We are of the opinion that it cannot be said that no prima facie case is made out. The petitions cannot be said to be maintainable in view of the bar contained in 43D(4) of the Unlawful Activities (Prevention) Act, 1967. The special leave petitions are, accordingly, dismissed. However, since the protection has been enjoyed by the petitioners approximately for 1½ years, three weeks time from today is granted to them to surrender. The petitioners shall surrender their passport forthwith with the Investigation Agency/Officer.

Pending application(s), if any, shall stand disposed of.”

(6) In the light of the law laid down by the Supreme Court as above, we hold that in view of the bar under Section 43D(4) of the 1967 Act the present appeal



filed by the appellant under Section 438 Cr.P.C. would not be maintainable.

- (7) Dismissed.
- (8) It is clarified that we have rendered no opinion on merits.
- (9) All pending application(s) also stands disposed of.

[DEEPAK SIBAL]
JUDGE

10.07.2024
shamsher

[DEEPAK MANCHANDA]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No