

2024:PHHC:109141-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-D-1545-2023

Reserved on: 09.08.2024

Pronounced on: 23.08.2024

BALJIT SINGH

...Appellant

Versus

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Mitul Singh Rana, Advocate
for the appellant.

Mr. D.S.Lamba, DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal as constituted under the provisions of Section 21 of the National Investigation Agency Act, 2008, is directed against the impugned order drawn on 20.11.2023, whereby the learned Additional Sessions Judge, Moga proceeded to decline the claimed facility of interim bail to the present appellant.

Factual Background

2. On 06.01.2022, a police party headed by SI Gurtej Singh was present at Canal bridge link road Mehna, for patrolling and nakabandi. After some time, a black colour vehicle bearing No.PB04AC-2831 was seen coming from the side of Chugawan, in

which three persons were sitting. SI Gurtej Singh signalled them to stop

2024:PHHC:109141-DB



the vehicle. However, the said persons did not stop and tried to flee away while running over the barricades but they were stopped by the members of the police party. As soon as the vehicle stopped, three persons sitting inside came out. The person who was sitting on the driver seat was armed with pistol, whereas the person sitting on the rear seat was having a hand grenade in his hand. The person holding pistol pointed out his pistol towards the police party with intention to kill and the person holding hand grenade tried to throw the same on the police party with intention to kill them. The accused persons were overpowered by the police party. On enquiry, the accused disclosed their names as Gurpreet Singh Gopi, Varinder Singh @ Vinda and Baljit Singh son of Baljinder Singh (appellant herein). During search of the accused persons, 2 live hand grenades were recovered from accused Baljit Singh, 6 live cartridges of 9 MM, and one 9 MM pistol with magazine was recovered from accused Gurpreet Singh whereas, one 9 MM pistol and 12 live cartridges of 9 MM and one spare magazine were recovered from accused Varinder Singh. On the statement of SI Gurtej Singh, FIR against the accused persons became registered. After completion of investigation(s), challan against the accused persons was presented on 07.03.2022.

3. Later on, the police vide rapat No. 43 dated 18.05.2022. added offences under Section 120-B IPC and Sections 10, 11, 13, 16, 17, 18, 20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter for short called as the UAPA). Supplementary challan

against the accused persons was presented on 29.08.2022, however, the

2024:PHHC:109141-DB



said challan was not accompanied by sanction as warranted under Section 45 of the UAPA.

4. The appellant herein filed application for grant of interim bail before the Court of learned Additional Sessions Judge, Moga. On the said application, a declining order was passed on 20.11.2023 by the learned trial Judge concerned. Feeling aggrieved, the petitioner-appellant herein has challenged the said order through filing of the instant appeal before this Court.

Submissions of the learned counsel for the appellant.

5. At the outset, the learned counsel appearing for the appellant, has placed reliance on the expostulations of law, as made in a verdict passed by a Division Bench of this Court, in case titled as **Manjeet Singh Vs. State of Punjab**, reported in **2023 (4) RCR (Criminal) 323**. The relevant paragraphs of the said verdict are extracted hereinafter.

35. But what has been urged by Mr. Rana is that the appellant cannot be kept in custody indefinitely without judicial appraisal of the material presented against him as the cognizance by the Court is barred without grant of sanction. He has urged that the liberty of a citizen is sacrosanct and the citizen cannot be deprived of the same for the failure of the authorities to discharge the mandate of law to decide the issue of sanction within the period prescribed. He stressed the very least that can be done in such a situation is that if sanction is not accorded, then on the expiry of the period prescribed under the Rules for grant of sanction, the accused should be released on bail. If after receipt of sanction the Court decides to proceed it

2024:PHHC:109141-DB



may pass necessary orders under the provisions of 437(5) or 439(2) of the Cr. P. C.

36. We are inclined to agree with this contention.

37. The provisions of the UA(P) Act are stringent. Keeping that in mind, a specific time limit for grant of sanction has been specified. It would be a travesty of justice if the accused is kept in custody for long periods after conclusion of investigation, just to await sanction so that cognizance may be taken. As no consequence for the delay in grant of sanction has been stipulated in the UA(P) Act or Rules, in our view it would be appropriate that in such a case the accused is released on interim bail to surrender once the sanction is received.

38. Accordingly, it is held that on conclusion of investigation and filing of challan, if no decision on sanction is taken and communicated within the period as specified in the 2008 Rules, the accused ought to be released on interim bail. At the time of grant of interim bail the accused would give an undertaking that as and when sanction is granted he would surrender before the Court. Upon his surrender it would be open to the accused to avail of his remedies including to apply for bail.

6. Consequently, he contends that in view of the expostulations of law (supra) as made in the verdict (supra), since no sanction has been accorded and the appellant is languishing in jail since long without any trial. Therefore, he may be released on interim bail.

Reply of the respondent-State.

7. The relevant paragraphs of the reply on affidavit furnished to the instant appeal are extracted hereinafter.

10. That it is also submitted here that request was moved to the Home Department for getting sanction to

2024:PHHC:109141-DB



pursue under Sections 3, 4, 5, Explosive Substance (Amendment) Act, 2001 and 10, 13, 18, 20 of Unlawful Activities (Prevention) Act, 1967. However, vide letter bearing memo No. 09/17/2023/2012 H4/1/61760/23 dated Chandigarh 09.08.2023 the Home Department has returned the file with objection that they are unable to grant permission to peruse the case under UAPA.

11. That apart from present case, two other cases detailed below already stand registered against the petitioner.

Sr. No.	FIR No./Date	Police Station	Sections
1.	03/07.01.2022	SAS Nagar	387/506 IPC
2.	06/21.01.2022	Fatehgarh Panjtoor	307/336/341/427/506/148/149 IPC and 25/27 Arms Act

Inferences of this Court.

8. For the reasons to be assigned hereinafter the reliance placed by the learned counsel for the appellant, upon, the above extracted paragraphs, as occur in the judgment passed by a Division Bench of this Court in case titled as ***Manjeet Singh Vs. State of Punjab (supra)*** rather is an inapt reliance thereons.

9. Principally for the reason that the expostulations of law (supra), as occur in the verdict (supra), are in conflict with the expostulations of law, as occur in paragraph No. 47 of the verdict passed by the Hon'ble Apex Court in case titled as **Judgebir Singh and Ors. Versus National Investigation Agency (reported in MANU/SC/0501/2023)**, to which Criminal Appeal Nos. 1011 of 2023 and 1012 of 2023 became assigned. The said paragraph is extracted hereinafter.

2024:PHHC:109141-DB



*“47. From the aforesaid, it is evident that the order of sanction passed by the competent authority can be produced and placed on record even after the filing of the chargesheet. It may happen that the inordinate delay in placing the order of sanction before the Special Court may lead to delay in trial because the competent court will not be able to take cognizance of the offence without a valid sanction on record. In such an eventuality, at the most, it may be open for the accused to argue that his right to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution. **This may at the most entitle the accused to pray for regular bail on the ground of delay in trial. But the same cannot be a ground to pray for statutory/default bail under the provisions of Section 167(2) of the CrPC.***

10. A plain reading of the above extracted paragraph but makes candid speakings, that the inordinate delay in placing the order of sanction before the learned Special Judge, if ultimately leads, to delay becoming caused vis-a-vis, the progression of the trial qua the charge drawn against the accused, or as proposed to be drawn in the report filed under Section 173 Cr.P.C., thereupon, the said causing of delay as arising from the non placing on record of the order of sanction to prosecute the accused, rather may not cause any breach to the mandate of fair and speedy trial, as occurs in Article 21 of the Constitution of India. The reason so carried therein becomes grooved in the premise that the placing on record the order of sanction before the learned Special Judge, when is the prima donna factum or the *sine qua none*, for the assumption of cognizance by the learned trial judge

2024:PHHC:109141-DB



concerned, vis-a-vis the report filed under Section 173 Cr.P.C., rather before it by the investigating officer concerned. Resultantly therebys no breach is caused to the mandate of Article 21 of the Constitution of India nor therebys there can be any bestowment of any leverage in the accused to as such claim any assigning to him of the benefit of the statutory default bail, as envisaged under Section 167(2) Cr.P.C.

11. Moreover, for the further reasons hereafter this Court concurs with the expostulations of law, as occur in the above extracted paragraphs, as borne in the verdict pronounced by the Division Bench of this Court in case titled as *Manjeet Singh Vs. State of Punjab (supra)*. The reason for making the said conclusion becomes sparked from the factum that there is no provision either in the Cr.P.C. or in the special statute (*supra*), wherebys this Court is bestowed with any jurisdiction to grant any interim bail. Contrarily the provisions as occur in the Cr.P.C., which but are applicable to the special statute concerned, do purvey a privilege to the accused to claim regular bail in terms of Section 439 Cr.P.C. Since in the said engrafted provisions of the Cr.P.C., there is no provision for any interim bail being granted to the accused therebys the observation (*supra*), are per incuriam the statutory provision (*supra*), as relate to the enlargement on bail of the accused.

Final Order of this Court.

12. In consequence, this Court finds no merit in the appeal, and, the same is accordingly dismissed. The impugned order is maintained and affirmed.

13. No order as to costs.

2024:PHHC:109141-DB



14. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

23.08.2024

kavneet singh

(KULDEEP TIWARI)
JUDGE

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