

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1462 of 2024

Arising Out of PS. Case No.-11 Year-2024 Thana- NIA District- Patna

=====

Devmani Rai @ Anish S/o- Nand Kishor Rai @ Bhola Ray Village- Mankauli
P S-Fakuli District- Muzaffarpur

... .. Appellant/s

Versus

The Union of India through NIA New Delhi

... .. Respondent/s

=====

Appearance :
For the Appellant/s : Mr. Umesh Prasad Singh, Sr. Advocate
Mr.Priyesh Kumar Jaiswal, Advocate
For the N.I.A. : Dr. K.N. Singh. (A.S.G.)
Mr. Shivaditya Dhari Sinha, AC to ASG
Mr. Manoj Kumar Singh, Spl. P.P., NIA
Mr. Ankit Kr. Singh, AC to Spl. P.P., NIA

=====

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

10 16-05-2025 The present appeal has been filed under Section-

21(4) of National Investigation Agency Act (hereinafter
referred as “N.I.A. Act”) in which the appellant has challenged
the order dated 30th of October, 2024, passed by the learned
Special Court N.I.A., Bihar, Patna in Special Case No. 6 of
2024 (R.C. No. 11/2024/NIA/DLI), whereby the learned
Special Court rejected the bail application filed by the appellant
herein.

2. Brief facts leading to the filing of the present
appeal is as under:-



2.1. An F.I.R. being Fakuli P.S. Case No. 19 of 2024 came to be lodged under Section-25(1AA), 26 and 35 of the Arms Act on 07.05.2024 against four accused, including the present appellant. The case relates to the recovery of one wooden butt and parts of A.K.47 from the possession of accused Vikash Kumar and Satyam Kumar on 07.05.2024. During interrogation of the aforesaid two accused, they disclosed that one A.K.47 was given to Devmani Rai @ Anish (present appellant) and thereafter house of the appellant was searched. On disclosure of the appellant herein, the parts of A.K.47 with magazine loaded with five cartridges, which was concealed beneath Marghatiya Bridge, was recovered and seized on 07.05.2024. Accordingly, the appellant was arrested. The local police investigated into the matter and thereafter filed the charge-sheet on 27.06.2024 under Sections- 25(1AA), 26 and 35 of the Arms Act. However, the Ministry of Home Affairs, Government of India, CTCR Division North Block, New Delhi, vide its order No.11011/72/2024/NIA dated 02.08.2024, directed the National Investigating Agency (N.I.A.) to take up the investigation of the F.I.R. of Fakuli P.S. Case No. 19 of 2024. Accordingly, N.I.A. re-registered the case as R.C. No. 11/2024/NIA/DLI under Sections- 25(1AA), 26



and 35 of the Arms Act.

3. After the arrest of the appellant, he filed application for releasing him on bail before the concerned Special Court. However, the Special Court, vide impugned order dated 30th of October, 2024, rejected the bail application filed by the appellant and, therefore, he has filed the present appeal.

4. Heard Mr. Umesh Prasad Singh, learned senior counsel for the appellant, assisted by learned counsel Mr. Priyesh Kumar Jaiswal and Dr. K.N. Singh, learned A.S.G. for the respondent Union of India (N.I.A.), assisted by Mr. Shivaditya Dhari Sinha, AC to ASG, Mr. Manoj Kumar Singh, learned Spl. P.P. (NIA) and Mr. Ankit Kr. Singh, learned A.C. to Spl. P.P. (NIA).

5. Learned senior advocate appearing for the appellant has mainly contended that now, after the investigation of N.I.A., recently supplementary charge-sheet has been filed under the provisions of the Arms Act as well as under Section-120B of I.P.C. and under Sections-13 and 18 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "U.A.P.A."). Learned senior advocate would submit that the ingredients of Sections-13 and 18 of U.A.P.A. would not be



attracted and, therefore, bar under Section-43-D(5) proviso of U.A.P.A. would not be applicable. Learned senior advocate would thereafter submit that only two parts of A.K. 47 rifle came to be recovered at the instance of the appellant, as per the case of the investigating agency. However, the said parts were sent to Forensic Science Laboratory after a period of 3 months from the date of registration of the F.I.R. It is further submitted that, so far as the transactions in the bank accounts of the present appellant and the co-accused with regard to Rs. 38,00,000/- are concerned, the same relates to their business transaction and, merely because there are certain entries in the bank accounts of the appellant as well as the co-accused, it cannot be said that the appellant is involved in the alleged transaction. In fact, the appellant has been falsely implicated.

6. Learned senior advocate would further submit that, in fact, after the registration of the F.I.R. by the local police, the charge-sheet has already been filed and the concerned trial court has taken cognizance of the same and thereafter the investigation has been transferred to N.I.A. Thereafter, N.I.A. has filed second F.I.R. for the same transaction. It is also contended that even for the seizure of the two parts of A.K.47, no independent witness has signed the



seizure list. Learned senior advocate, at this stage, has referred the relevant pages of the charge-sheet papers which are annexed by the respondent N.I.A. with the second counter affidavit. Learned senior counsel further submits that, in fact, there is no material against the appellant herein and the prosecution has failed to point out any *prima facie* case against the appellant and, therefore, the bar of Section-43-D(5) of U.A.P.A. would not be applicable.

7. Learned senior counsel lastly submitted that the appellant is in custody since 07.05.2024, i.e. for last one year and, therefore, he may be released on bail.

8. On the other hand, learned A.S.G. has opposed the present appeal. Learned A.S.G. has read the averments made in the counter affidavits filed on behalf of respondent N.I.A. It has been mainly contended by learned A.S.G. that now the supplementary charge-sheet has been filed against the appellant wherein the respondent N.I.A. has stated, in detail, with regard to the involvement of the appellant in the incident in question. Learned A.S.G. would mainly submit that on the basis of the disclosure made by the appellant, parts of A.K. 47 with magazine loaded with five cartridges, which were concealed beneath the Marghatiya Bridge, were recovered. It



was further revealed that in the bank account maintained in the name of appellant, a transaction of Rs.38,00,000/- took place in 2 years and the said transactions were made with co-accused Vikash Kumar and Md. Ahmad Ansari. It is also submitted that, during investigation, five mobile phones had been seized from accused Vikash Kumar, Md. Ahmad Ansari and the present appellant which were forwarded to C.F.S.L., New Delhi for forensic examination. The report of the C.F.S.L., New Delhi revealed that the said mobile phones contained photographs of A.K. 47 rifle, Barretta Pistol and Glock Pistol made in Austria, photograph of one person, Railway ticket of Vikash Kumar from Muzaffarpur to Dimapur and Railway ticket of Satyam Kumar and Vikash Kumar from Dimapur to Muzaffarpur. Further, the C.D.R's. were also obtained and it revealed that all the four accused persons were interconnected with one another.

9. Learned A.S.G., at this stage, has also submitted that statements of protected witnesses i.e. X-1, Y-1, Y-2, Y-3, Y-4, Y-5, Y-6 and Y-7, supported that the prohibited arms were procured by the accused persons from Dimapur, Nagaland for its sale and supply to criminals and Naxals in Bihar and, for the said purpose, the accused persons had visited Dimapur by various modes, including the THAR vehicle of the



present appellant and the amount was also sent to Dimapur. At this stage, it has been further submitted that the THAR vehicle of the appellant is registered in the name of his mother. The said vehicle has been seized vide seizure list dated 21.01.2025. Learned A.S.G., therefore, urged that there is ample material available in the papers of the charge-sheet connecting the appellant with the incident in question and, *prima facie*, it is established that the appellant has committed the alleged offences punishable under Chapter-IV of U.A.P.A. and, therefore, provision of Section-43-D(5) of U.A.P.A. would be applicable. Hence, this Court may not entertain the present appeal.

10. Lastly, learned A.S.G. submitted that there are other criminal antecedents of the appellant. Thus, looking to his antecedents also, his case may not be considered for grant of bail and the appeal filed by the appellant be dismissed.

11. We have considered the submissions canvassed by learned advocates appearing for the parties. We have also perused the materials available on record and gone through the papers of charge-sheet and the relevant papers/documents separately supplied by learned A.S.G., which includes reference of statements of protected witnesses.



12. It would emerge from the record that initially a First Information Report under the provisions of the Arms Act came to be registered with Fakuli Police Station. The local police investigated into the matter and thereafter filed charge-sheet against the accused, including the appellant herein. The case relates to the recovery of one wooden butt and parts of A.K. 47 from the possession of co-accused Vikash Kumar and Satyam Kumar. During interrogation of the aforesaid two accused, they disclosed that one A.K. 47 rifle was given to the present appellant and, therefore, the house of the appellant was searched. Further, on disclosure of the appellant, the parts of A.K. 47 with magazine loaded with five cartridges, which was concealed beneath Marghatiya Bridge, was recovered and seized on 07.05.2024. However, thereafter the respondent N.I.A. took over the investigation pursuant to the order dated 02.08.2024 passed by the concerned Ministry, the case was re-registered as R.C. No. 11/2024/NIA/DLI. Now, during the investigation carried out by the N.I.A., seized arms, i.e. A.K. 47, wooden Butt, Lens and 5 number of ammunition were forwarded to F.S.L., Bihar, Patna for forensic examination. Report was received on 16.10.2024, wherein it has been opined that A.K. 47 was of foreign make regular automatic A.K. 47



rifle and the same was found in working order and was an effective fire-arm. The expert has further given the opinion that barrel of the said A.K. 47 rifle indicated that previously firing has been done from this rifle. The ammunition were also found to be live and effective. The expert further opined that lenses are used for quick targetting.

13. It is further revealed from the papers of the charge-sheet that one bank account was being maintained in the name of the appellant in Axis Bank, Muzaffarpur and a transaction of Rs. 38,00,000/- took place during the period between April, 2022 and April, 2024. Similarly, transaction of Rs. 20,00,000/- had taken place in another account held in the name of co-accused Md. Ahmad Ansari at I.D.F.C. First Bank, Dimapur during the period between March, 2023 and April, 2024. It transpires from the charge-sheet papers that, during investigation, five mobile phones had been seized from accused Vikash Kumar, Md. Ahmad Ansari and the appellant herein, which were forwarded to C.F.S.L., New Delhi, for its examination. Report dated 30th September, 2024 was received by N.I.A. which revealed that the said mobile phone contained photograph of A.K. 47 rifle, Barretta Pistol and Glock Pistol made in Austria, photograph of one person, Railway ticket of



Vikash Kumar from Muzaffarpur to Dimapur and Railway ticket of Satyam Kumar and Vikash Kumar from Dimapur to Muzaffarpur. Further, the C.D.R's. were also obtained and it revealed that all the four accused persons were interconnected with one another. Further, the appellant, Vikash Kumar and Md. Ahmad Ansari have common contact number of Ranjeet Das of Dimapur.

14. There is a reference of statements of protected witnesses, i.e. X-1, Y-1, Y-2, Y-3, Y-4, Y-5, Y-6 and Y-7, who have supported that the prohibited arms were procured by the accused persons from Dimapur, Nagaland for its sale and supply to criminals and Naxals in Bihar and, for the said purpose, the accused persons had visited Dimapur by various modes, including the THAR vehicle of the present appellant and the amount was also sent to Dimapur. The said vehicle is registered in the name of the mother of the appellant.

15. Thus, it is the specific case of N.I.A. that conspiracy is found to be hatched in secrecy for procuring prohibited arms, i.e. A.K. 47 and the acts of the accused indicates their involvement in commission of crime punishable under Sections-13 and 18 of U.A.P.A. as well as under Section-120B of I.P.C.



16. We are of the view that contention taken by learned senior advocate appearing for the appellant that ingredients of Sections-13 and 18 of U.A.P.A. are not made out and, therefore, provisions contained in Section-43-D(5) would not be applicable, is misconceived. We are of the view that there are reasonable grounds for believing that accusation against the appellant is, *prima facie*, true and, *prima facie*, ingredients of offences punishable under Sections-13 and 18 of U.A.P.A. are made out.

17. We have also gone through the decision rendered by the **Hon'ble Supreme Court** in the case of **Shoma Kanti Sen Vs. State of Maharashtra & Anr.**, reported in **(2024) 6 SCC 591**, upon which reliance has been placed by the learned senior counsel appearing for the appellant. We are of the view that the said decision would not render any assistance to the appellant in the facts and circumstances of the present case and in view of the materials collected by the respondent N.I.A. against the appellant which have been placed in the papers of the charge-sheet.

18. Further, there are two criminal antecedents of the appellant. In fact, appellant has also referred the same in memo of appeal.



19. Looking to the aforesaid facts and circumstances of the present case, we are not inclined to consider the request made by the appellant for grant of bail.

20. Accordingly, the appeal stands dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

K.C.Jha/-

U		T	
---	--	---	--

