

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.1520 of 2024**

Arising Out of PS. Case No.-5 Year-2019 Thana- NIA District- Patna

Bhikhan Ganjhu @ Deepak Kumar, S/o Bandhu Ganjhu, R/o Village- Vijan,  
P.O and P.S- Piparwar, District- Chatra, Jharkhand, PIN- 825321.

... .. Appellant

Versus

1. The State of Bihar
2. Union of India, through National Investigating Agency Represented by Superintendent of Police N.I.A Having its office at N.I.A. Camp Office, Patna.

... .. Respondents

**Appearance :**

|                   |   |                                                                                                                                      |
|-------------------|---|--------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant | : | Mr. Balaji Srinivasan, Advocate<br>Mr. Niranjan Kumar, Advocate<br>Ms. Aakriti Priya, Advocate<br>Mr. Vinayak Harshvardhan, Advocate |
| For the UoI       | : | Mr. Dr. K.N. Singh, Sr. Advocate<br>Mr. Arvind Kumar, Special PP                                                                     |
| For the State     | : | Mr. Abhimanyu Sharma, Addl PP                                                                                                        |

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**and**  
**HONOURABLE MR. JUSTICE SHAILENDRA SINGH**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 19-02-2025**

Heard Mr. Balaji Srinivasan, learned counsel assisted by Ms. Akriti Priya and Mr. Niranjan Kumar, learned counsel on behalf of the appellant and Mr. Arvind Kumar, learned Special PP for the National Investigating Agency ( in short 'NIA').

2. By filing this appeal, the sole appellant has assailed the judgment dated 25.10.2024 passed by learned Special Judge, NIA at Patna (hereinafter referred to as learned trial court) in Special Case No. 02 of 2021 in connection with R.C. Case No. 05



of 2019. Learned trial court has been pleased to reject the prayer for regular bail of the appellant under Section 43(D) of the Unlawful Activities (Prevention) Act, 1967 (in short 'UA(P) Act') read with Section 439 and 440 of the Code of Criminal Procedure (in short 'Cr.P.C.').

**Brief Facts of the Case**

3. It is alleged that the petitioner is Zonal Commander of Tritiya Prastuti Committee (hereinafter referred to as the 'TPC'), terrorist gang which is a banned organization. In its third supplementary charge sheet filed by the NIA showing this appellant an absconder, the facts revealed in course of investigation which are the basis of filing the charge sheet are stated in paragraph 17.7, 17.8, 17.21, 17.22 and 17.24 of the charge sheet. The appellant has been described as A-8 in the supplementary charge sheet. It is revealed that the appellant is the Zonal Commander of the banned organization and is engaged in extortion of huge levy from coal transporters by putting them in fears of death/grievous hurt in the State of Jharkhand and carries highly sophisticated and prohibited arms for the same purpose. In paragraph 17.11 of the first supplementary charge sheet, it is stated that a consignment of four AK-47 rifles, 4000 live cartridges, 2/3 Magazine of AK-47 rifles was forwarded by Ningkhan Sangatam



(A-6) to Mukesh Singh (A-5) and Santosh Singh (A-7) by a truck, bearing registration no. NL07A6508 owned by Ningkhan Sangatam (A-6). It is alleged that these weapons were supplied to Tripurari Singh (A-4) who further delivered them to Bhikhan Ganju (the appellant), the Zonal Commander of TPC. Another consignment of arms and ammunition consisting of one number of 30.06 rifle, 1000 live cartridges of 30.06 bore, 1000 live cartridges of AK-47 rifle, four bullet proof jackets were sent to Mukesh Singh (A-5) and Santosh Singh (A-7) through Suraj (A-1). The investigation revealed that the consignments of January 2018, April 2018 and June 2018 were further delivered to Tripurari Singh by the accused persons and the said consignments were delivered to this appellant by the accused Tripurari Singh (A-4). In its first supplementary charge sheet, NIA has recorded that accused Santosh Kumar @ Santosh Singh (A-7) was remanded in this case on 30<sup>th</sup> September, 2019 but Bhikhan Ganju (A-8) is still an absconder.

**Submissions on behalf of the Appellant**

4. Learned counsel for the appellant has submitted before the this Court that in this case, the appellant has been implicated on the strength of a confessional statement of Tripurari Singh (A-4). It is his submission that the investigation has not



established any trail of money against this appellant save and except a revelation by the co-accused Tripurari Singh that this appellant has given him Rs.60,000/- in cash.

5. Learned counsel submits that earlier, the prayer for bail of Tripurari Singh was rejected by this Court vide judgement dated 22.11.2021 in Cr. Appeal DB No. 180 of 2021. However, later on, a learned Coordinate Bench of this Court vide order dated 06.04.2023 passed in Cr. Appeal DB No. 930 of 2022 granted bail to said Tripurari Singh. A copy of the judgment dated 06.04.2023 granting bail to said Tripurari Singh has been placed before this Court.

6. Learned counsel submits that the prayer for bail of another co-accused Santosh Kumar @ Santosh Singh was rejected by the learned co-ordinate Bench of this Court vide order dated 03.10.2023 passed in Criminal Appeal (DB) No. 114 of 2021 after noticing that the case of Santosh was distinguishable from that of Tripurari Singh @ T.P. Singh, therefore, principles of parity would not be available. The said judgment of learned co-ordinate Bench of this Court was taken in appeal before the Hon'ble Supreme Court in petition for Special Leave to Appeal (Criminal) No. 2319 of 2024 wherein the Hon'ble Supreme Court was pleased to notice that the petitioner was arrested on 30.09.2019 and since then he



was in custody whereas the chargesheet was filed suggesting 178 prosecution witnesses to be examined against him. The Hon'ble Supreme Court having considered the period already spent by the petitioner in custody and the fact that the conclusion of trial will take reasonably long time, directed release of the appellant Santosh Kumar @ Santosh Singh on bail, subject to certain conditions.

7. It is further submitted that another co-accused Mukesh Singh moved this Court in Cr. Appeal (DB) No. 563 of 2022 for grant of bail which was refused by this Court vide order dated 30.04.2024 whereafter the Hon'ble Supreme Court has been pleased to allow the prayer of the appellant Mukesh Singh @ Pinku in Petition for Special Leave to Appeal (Crl.) No. 11940 of 2024 vide order dated 11.11.2024. It is submitted that another co-accused namely Ningkhan Shangtam whose prayer for bail has been rejected by the Court in Cr. Appeal (DB) No. 882 of 2023 has moved the Hon'ble Supreme Court and the Special Leave Petition is pending consideration.

8. Learned counsel for the appellant has apart from placing the aforementioned judgments relied upon the following judgments of the Hon'ble Supreme Court to support his contention that the appellant who has been produced in this case on



25.08.2023, having spent about one and half year would be entitled to get privilege of bail on the same principles on which the other co-accused have been granted.

| Sl. No. | Case Title                                                                  | Reference              |
|---------|-----------------------------------------------------------------------------|------------------------|
| 1.      | Yedala Subba Rao v. Union of India                                          | (2023) 6 SCC 65        |
| 2.      | Ashim v. NIA                                                                | (2021) 9 SCC 607       |
| 3.      | Union of India v. KA Najeeb                                                 | (2021) 3 SCR 443       |
| 4.      | Angela Barish Sontakke v. State of Maharashtra                              | (2021) 3 SCC 723       |
| 5.      | Thwaha Fasal v. Union of India                                              | (2021) 8 SCR 797       |
| 6.      | Vernon v. State of Maharashtra                                              | (2023) 10 SCR 867      |
| 7.      | Gurwinder Singh v. State of Punjab                                          | (2024) 12 SCR 134      |
| 8.      | Shoma Kanti Sen v. State of Maharashtra                                     | (2024) 4 SCR 270       |
| 9.      | Javed Guam Nabi Shaikh v. State of Maharashtra and Another                  | 2024 INSC 645          |
| 10.     | Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh | 2024 INSC 534          |
| 11.     | Pradeep Rameshwar Sharma v. National Investigating Agency & Anr.            | 2023 SCC OnLine SC1075 |
| 12.     | Jalaluddin Khan v. Union of India                                           | 2024 INSC 604          |
| 13.     | V. Senthil Balaji v. The Deputy Directorate of Enforcement                  | (2024) 10 SCR 393      |
| 14.     | Sundeeep Kr Bafna v. State of Maharashtra                                   | (2014) 16 SCC 623      |

9. At this stage, this Court would briefly take note of one more submission of learned counsel for the appellant not because



the same is much relevant for this case but because it has been pleaded extraneously before this Court. Learned counsel for the appellant has submitted that even though, he was produced in this case on 25.08.2023 after the fifth production warrant, the fact remains that he was arrested on 25.03.2022 in connection with another case at Ranchi and he was in Hotwar Jail since then. In the said case, the appellant has been released on bail by the Hon'ble Jharkhand High Court vide judgment dated 04.07.2024 in Cr. Appeal (DB) No. 554 of 2024. It is the submission that he had filed an application dated 24.03.2023 in the court of Special Judge, NIA, Patna with a prayer that production of the appellant may be accepted through video conferencing as there is threat to his life but the said application of the appellant was rejected by the learned trial court on the ground that the petitioner had nowhere stated as to from whom he was apprehending life threat. The learned trial court was of the opinion that there was nothing on the record to show that there is any threat to life of the appellant. So, considering all the facts and circumstances, the court did not find it judicious to allow the application and rejected the same.

**10.** It is submitted that because the learned NIA court did not agree for his production through video conferencing, the delay has occurred. For purpose of academic discussion as to



whether the petitioner would be deemed to be in custody in connection with this case because his prayer for production through video conferencing was refused by the court, the learned counsel has taken this court through the judgment of the Hon'ble Supreme Court in case of **Sundeep Kumar Bafna vs. State of Maharashtra** reported in **(2014) 16 SCC 623**.

**Submissions on behalf of the NIA**

**11.** Contesting the appeal on behalf of the NIA, Mr. Arvind Kumar, learned Special PP for NIA has taken this Court through the relevant paragraphs of the chargesheet in which it has been stated that the investigation revealed that the consignments of arms and ammunition were delivered to this appellant through Tripurari Singh (A-4). Learned Special PP submits that the present case has been registered after recovery of parts of one AK-47 rifle and 2 UVGL (Under Barrel Grenade Launcher) and one empty magazine of AK-47 along with 800 live cartridges 5.56 x 45 mm which were kept concealed and were being transported in a seized white colour Tata Safari. The seizures of 600 rounds of ammunition was made on 07.02.2019 and rest of arms and ammunition were recovered later on 10.02.2019 from the cavities created in the vehicle on the disclosure of the accused persons. It is submitted that interrogation of the accused persons revealed the



entire transactions which were being carried out. Tripurari Singh (A-4) has made disclosure before independent witnesses and in NIA Case No. RC-06/2018/NIA-DLI registered under various sections of IPC and UA(P) Act and the Criminal Law Amendment Act, 1908, the chargesheet of the said case carries Section 164 Cr.PC statements of the other co-accused which establish his position as a Zonal Commander of TPC having clear links with the co-accused of this case. It is a banned unlawful association and is a terrorist gang operating in the State of Bihar and Jharkhand. Learned counsel refers the observations in paragraph '16' of the impugned judgment.

**12.** It is stated that the appellant faced around 28 cases, details of which have been given in paragraph '16' of the counter affidavit with the copy of the FIRs enclosed as Annexure- B. It is submitted that the statement of the witnesses revealed that the appellant was involved in procuring arms and ammunition to strengthen the foothold of TPC in the State of Jharkhand and to commit terrorist act with intention to wage war against the Government. In this connection, the observations in paragraph '17' of the impugned judgment have been brought to the notice of this Court.



**13.** Learned counsel for the NIA has taken this Court through the order of the learned co-ordinate Bench of this Court in the case of Tripurari Singh. It is pointed out that the learned co-ordinate Bench granted bail to Tripurari Singh (A-4) after noticing the earlier observation of this Court wherein this Court had observed that the said appellant was in incarceration for over two years, therefore, the trial court was directed to conduct the trial expeditiously and conclude the same as early as possible. In paragraph '8' of its order, the learned co-ordinate Bench noticed that the appellant was undergoing pretrial detention from 16.02.2019 and it was not in dispute that the prosecution had cited as many as 176 prosecution witnesses. The charge was framed only on 23.02.2022, therefore, for all these reasons, the learned co-ordinate Bench was pleased to enlarge the said appellant on bail. It is submitted that later on, the number of witnesses to be produced in course of trial has been pruned and it has been brought down to 98 in the case of Tripurari Singh whereas in the case of the present appellant, a separate trial is going on because he was absconding so the trial has been delayed, he has instruction to say that the number of witnesses is likely to be brought down around 100. It is further pointed out that in the case of this appellant, 44 witnesses have already been examined and from the judgment of the learned



trial court which is impugned in the present appeal, it would appear that the trial court has itself recorded that the dates are given in slot.

**14.** Learned counsel further submits that so far as the case of Santosh Singh and Mukesh Singh who have been granted bail by the Hon'ble Supreme Court is concerned, it would appear from a bare reading of the judgment of the Hon'ble Supreme Court that while Mukesh Singh has been granted bail after noticing in paragraph '4' that he does not have criminal antecedent and he is not a repeat offender, and that he was in incarceration since 18.02.2019 which was more than five years and six months. Contrary to this fact situation, in the present case the appellant is said to be the Zonal Commander of a banned terrorist organization who has got 28 cases. He remained absconding for a long time and delayed the trial. This Court would hasten to add here that learned counsel for the appellant has informed this Court that there were 30 cases against the appellant and out of those 30 cases, in 15 cases at least, he has been acquitted.

**15.** Learned counsel for the NIA has further submitted that Santosh Kumar @ Santosh Singh was granted bail by the Hon'ble Supreme Court again after noticing that he was arrested on 30.09.2019 and was in custody since then. It is submitted that



once again, the case of the present appellant would stand on different footing with that of Santosh Singh for the reason that he was an absconder at the time of filing of chargesheet and in connection with this case, he has been produced only on 25.08.2023.

16. Learned counsel for the NIA has further distinguished the cases cited on behalf of the appellants which we have taken note of in paragraph '8' hereinabove. It is submitted that in most of the cases, the Hon'ble Supreme Court was pleased to grant bail to the accused after finding that either the charges were not framed or that they were in incarceration for long years i.e. for more than five years to eight years. In some of the cases, the Hon'ble Supreme Court found that there were huge number of witnesses ranging in between 300 to 550 witnesses. In **V. Senthil Balaji** case, there were 2000 accused. It is submitted that every case has its own fact situation and the judgments rendered by the Hon'ble Supreme Court have been given in the particular fact situation of the case.

17. It is submitted that in the present case, the distinguishable features of the case are apparent. The appellant was an absconder, the trial has been delayed for this reason and he has huge criminal antecedents and has been in incarceration in



connection with this case only for about one and half year. At the same time, the number of witnesses which are left to be examined are only around 56-60 which is not such that they are not likely to be examined within a reasonable period.

**Consideration**

**18.** We have heard learned counsel for the appellant and learned counsel for the NIA as also perused the records. The appellant in this case is making prayer for bail on the ground of parity.

**19.** Learned counsel for the appellant has while raising the plea of parity submitted that the appellant has been implicated in this case on the basis of confessional statement of the co-accused Tripurari Singh @ T.P. Singh. It has been stated before this Court that on behalf of Tripurari Singh, it was claimed that there was no tangible evidence with regard to the allegations that he used to travel for supplying arms and he funded Rs.60,000/- to Bhikhan Ganju (the appellant). The learned co-ordinate Bench has, in case of Tripurari Singh recorded that the learned Prosecutor has read opinion of the investigator reflected in the chargesheet to demonstrate that there is evidence against the appellant, however, he is not in a position to point out any evidence against the appellant in form of statement of witnesses or the bank accounts.



20. We have considered the submissions made at the Bar. In order to grant bail to the accused on the principle of parity, we are reminded of the judgment of the Hon'ble Supreme Court in the case of **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana** reported in (2021) 6 SCC 230 as under:-

“25. We are constrained to observe that the orders passed by the High Court granting bail fail to pass muster under the law. They are oblivious to, and innocent of, the nature and gravity of the alleged offences and to the severity of the punishment in the event of conviction. In *Neeru Yadav v. State of U.P.*<sup>12</sup>, this Court has held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail. This Court observed : (SCC p. 515, para 17)

“17. Coming to the case at hand, it is found that when a stand was taken that the second respondent was a history-sheeter, it was imperative on the part of the High Court to scrutinise every aspect and not capriciously record that the second respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order<sup>13</sup> clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the second respondent has been charge-sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside.”

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12. (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527]

13 *Mitthan Yadav v. State of U.P.*, 2014 SCC OnLine All 16031



26. .... Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”

21. From the materials available on the record, we find that while granting bail to **Mukesh Singh @ Pinku** in Special Leave to Appeal (Criminal) No. 11940 of 2024, the Hon’ble Supreme Court has observed in paragraph ‘4’ interalia as under:-

4. Learned Additional Solicitor General of India rightly submits that the trial has since been expedited. However, it seems to us that in conclusion of the remainder of the prosecution evidence and the defence evidence, if any that may be led by the petitioner or his co-accused, the conclusion of trial will take some reasonable time. The petitioner does not have criminal antecedents. He is not a repeat offender. It is true that the nature of charges is quite serious. However, having regard to the period already undergone by the petitioner, we are satisfied that he can be released on bail at this stage. Ordered accordingly.”



**22.** Earlier, the Hon'ble Supreme Court has noticed in paragraphs '2' and '3' of the said judgment that the appellant was arrested on 18.02.2019 and he was in custody for more than five years and six months. As regards the status of trial, the Hon'ble Supreme Court was informed that after framing of charge, the trial has commenced and around 50 witnesses out of 106 witnesses had since been examined. In the present case, we find that contrary to the case of Mukesh Singh @ Pinku, the appellant has huge criminal antecedents. He is said to be a Zonal Commander of an outfit namely, TPC which is a banned terrorist organization. His period of incarceration in connection with this case is only one and half year and the fact remains that he was absconding at the time of filing of chargesheet and only three years later, he was arrested at Ranchi in connection with another case. He is, therefore, a history-sheeter.

**23.** Similarly, the case of the appellant is distinguished from that of Santosh Kumar @ Santosh Singh. In the said case also, the appellant was in incarceration for more than five years after his arrest on 13.09.2019 and the Hon'ble Supreme Court found that the list of the witnesses has though been pruned to 98 instead of 178, only 35 witnesses had since been examined. In the present case, however, the fact is that the appellant has been produced in this case only on 25.08.2023 and 44 witnesses as submitted by learned counsel for the appellant have already been examined in approximately 1½



years. The learned trial court has recorded that dates are being provided in slot, hence, it cannot be said that the conclusion of trial in the present case is likely to result in an incarceration for indefinite period and there is no likelihood of conclusion of the trial in near future.

**24.** Similarly, Tripurari Singh has been granted bail by learned co-ordinate Bench of this Court after noticing that at that time, the prosecution had cited as many as 176 prosecution witnesses and he was in custody since 16.02.2019.

**25.** In the present case, the learned trial court has recorded in paragraph '11' of the impugned order that 22 witnesses examined in course of trial have supported the prosecution case.

**26.** So far as other judgments which have been cited at the Bar and we have taken note of the same hereinabove are concerned, in those judgments also we find that in most of the cases, either the charges were not framed or the accused was in custody for a long period ranging between 5 and 8 years and there was no hope of conclusion of trial within a reasonable period.

**27.** Having regard to the seriousness of the matter, the severity of punishment, the huge criminal antecedent of the appellant and the fact that he was absconding for a long time which has resulted in delayed trial are some of the distinguishing features of the



case of the appellant, the plea of parity would, therefore, not succeed.  
We are of the opinion that he would not deserve bail at this stage.

28. Learned counsel for the NIA has given us to understand that they are making all endeavours to produce six to eight witnesses in a month on the dates provided by the learned trial court and there is every possibility that all the prosecution witnesses would stand examined at best within a period of one year from today.

29. Taking note of the aforesaid stand of the NIA, we say that in case, the prosecution witnesses are not produced on the slot dates in the matter and they do not get examined within a period of one year, as has been stated by learned counsel for the NIA, the appellant may renew his prayer for bail.

(Rajeev Ranjan Prasad, J)

( Shailendra Singh, J)

Lekhi/-  
Priyanka/-

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