

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1419 of 2025

Arising Out of PS. Case No.-31 Year-2022 Thana- NIA District- Patna

-
1. Reyaz Moarif @ Bablu S/o Md Islam @ Md. Islamuddin Ansari R/o Village- Kuawan, P.S.- Chakiya, Dist- East Champaran, Bihar.
 2. Md. Tanweer @Tanweer Barkati S/o Md. Abdullah R/at Village - Bahadurpur, P.S. Mehsi, Dist- East Champaran, Bihar.
 3. Md. Aabid @ Md. Abid S/o Md Rustam R/o Village- Bahadurpur, P.S.- Mehsi, Dist- East Champaran, Bihar.
 4. Irshad @ Md. Belal S/o Md Shahid R/o Village- Harpur Kishuni, Bara Chakia, Ward no 10, P.S. Chakia, Dist- East Champaran, Bihar.

... .. Appellants

Versus

1. The Union of India through Ministry of Home Affairs.
2. The National Investigation Agency (NIA), through its Director General.
3. The Director General, (NIA), CGO Complex, Lodi Road, New Delhi.

... .. Respondents

Appearance :

For the Appellants	:	Md. Thahir, Advocate Mr. Navneet Prabhakar, Advocate Mr. Kundan Kumar Ojha, Advocate Ms. Sadhna Paragher, Advocate Ms. Megha Singh, Advocate
For the NIA	:	Dr. K.N. Singh, A.S.G Mr. Manoj Kumar Singh, SPL. PP. NIA Mr. Ankit Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 14-07-2026

This appeal has been preferred for setting aside the order dated 23.08.2025 passed by the learned Special Court (NIA Cases), Patna in Special Case No. 07/2022 (hereinafter referred to as the impugned order) whereby and whereunder the application



filed by the appellants under Section 45 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'UAPA, 1967') challenging the validity of sanction has been rejected by the learned Special Judge and the court has been pleased to impose a cost of Rs. 10,000/- on the appellants.

2. It appears on perusal of the records that these appellants are facing trial in Special Case No. 07/2022. They are accused nos. 4, 28, 29 and 30. They have been charged under Sections 17, 18 and 18A of the UAPA, 1967. The case arises out of R.C. No. 31 of 2022 originally registered with the Phulwarisharif P.S. in Crime No. 827 of 2022. In the present case, this Court is not required to go into the allegations against the appellants, therefore, for the brevity, this Court would not go into the charges against the appellants.

3. The bone of contention in the present case is the order of the learned Special Judge, NIA rejecting the application of the appellants to take up the challenge to the sanction order. In this connection, the learned court has taken a view that the appellants have intentionally chosen to file the petition under Section 45 of the UAPA, 1967 during the ongoing trial to prolong the conclusion of trial. The court found that the appellants had not raised this issue at the earliest available two stages i.e. at the stage of the



cognizance and the framing of charge. The learned court has taken a view that the appellants ought to have waited till the conclusion of the trial before filing the petition.

4. Learned counsel for the appellants submits that the Central Government, vide sanction order dated 01.08.2023 in respect of appellant nos. 2 to 4 and vide order dated 14.03.2024 in respect of appellant no. 1, has granted sanction under Section 45 of the UAPA, 1967 read with Section 196 Code of Criminal Procedure (in short 'CrPC') on the basis of NIA's recommendation but according to him, this sanction order has been issued in a completely mechanical manner, based only on the agency's report. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in case of **Fuleshwar Gope Vs. Union of India and Others** reported in **2024 SCC Online SC 2610** and submitted that the validity of the sanction may be tested at the threshold. It is submitted that as on today, seventeen witnesses have been examined, six separate chargesheets were filed and all the chargesheeted accused are being tried in the same and one trial, there are altogether 423 witnesses as per the chargesheets.

5. Learned counsel submits that in such circumstance, learned trial court could have well appreciated the fact that examination of the large number of witnesses would take several



years and the challenge to the sanction order at the stage of trial may be considered at the earliest opportunity.

6. It is submitted that in the case of **Fuleshwar Gope** (supra), the Hon'ble Supreme Court has been pleased to hold the right of an accused to avail all remedies available to him under law, in ordinary circumstances challenge to sanction under UAPA should be raised at the earliest possible opportunity so as to enable the Trial Court to determine the question, for its competence to proceed further and the basis on which any other proceeding on the appellate side would depend on the answer to this question. The Hon'ble Supreme Court having considered that in the said case out of 125, 113 witnesses had already been examined, refrained from returning any finding on the challenge to the validity of the sanction qua the appellants and left it to be raised before the learned trial court who was directed to decide it promptly.

7. Learned counsel has further relied upon a Division Bench judgment of the Hon'ble Karnataka High Court in the case of **National Investigation Agency, Bengaluru Vs. Fairoz Pasha and Others** reported in **2025 SCC OnLine Kar 4023**. Referring to paragraph '19' of the said judgment, learned counsel has contended that the Hon'ble Division Bench of Karnataka High



Court has held that after the charges are framed, the Court can summon the sanctioning authority and examine the validity of sanction order. If the sanction order is found to be invalid, there is no need to hold further trial, and the accused can be discharged even at that stage. The Hon'ble High Court has further made it clear that the observations of the Court is made with a rider that the prosecution can obtain fresh sanction in that eventuality.

8. Learned ASG assisted by Mr. Manoj Kumar, learned Standing Counsel for the NIA has opposed the appeal. However, having gone through the judgment of the Hon'ble Supreme Court in the case of **Fuleshwar Gope** (supra) and that of the judgment of the Hon'ble Karnataka High Court in the case of **Fairoz Pasha** (supra), learned ASG submits that the observations of the learned trial court that the appellants ought to have waited till the conclusion of the trial before filing the petition may not hold good, therefore, that part of the order may be set aside and the trial court may be directed to consider the application afresh in accordance with law.

9. Having heard learned counsel for the appellants and learned ASG for the NIA as also on perusal of the records, this Court finds that these appellants are facing trial in Special Case No. 07 of 2022. There is no denial of the assertions made by the



learned counsel for the appellants that the huge number of prosecution witnesses are to be examined in this case and out of them only seventeen witnesses have been examined. The appellants have filed an application under Section 45 of the UAPA, 1967. Section 45 reads as under :-

“45. Cognizance of offences.

¹[(1)] No Court shall take cognizance of any offence--

(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and ²[if] such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

³[(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government.]”

1. S. 45 renumbered as sub-S. (1) thereof by Act 35 of 2008, S.13 (w.e.f 31-12-2008).

2. Substituted by Act 28 of 2019, S.9, for “where”(w.e.f. 14-8-2019).

3. Inserted by Act 35 of 2008, S.13 (w.e.f 31-12-2008).



10. It is evident that Section 45(1) bars taking of cognizance of any offense under Chapter III, Chapter IV and Chapter VI without previous sanction of the Central Government or the State Government, as the case may be. In this case, the order taking cognizance is not under challenge and that stage is over. The appellants did not challenge the sanction order at the stage of cognizance or at the stage of framing of charge. The challenge is being made at the stage of trial. Sub-section (2) of Section 45 talks of grant of sanction for prosecution after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in course of investigation and make a recommendation, within such time as may be prescribed, to the Central Government or, as the case may be, the State Government. It is the contention of the appellants that the sanction order has been issued in mechanical way without considering the case diary, the original statements of eye witnesses and other exculpatory evidence.

11. This Court would not examine this issue on merit in the present appeal, however, keeping in view the judgments of the Hon'ble Supreme Court and that of the Hon'ble Karnataka High Court and the stand taken by the learned ASG, this Court is of the



considered opinion that the learned trial court ought to have examined the challenge to the sanction order at the earliest opportunity as soon as it has been raised by the appellants. In this regard, the relevant **paragraph '18'** from the judgment of Hon'ble Supreme Court in the case of **Fuleshwar Gope** (supra) is being quoted hereunder for a ready reference:-

“18. The UAPA does not provide for any such saving of the sanction. This implies that, in the wisdom of the legislature, the inbuilt mechanism of the Act of having two authorities apply their mind to the grant of a sanction, is sufficient. This emphasizes the role and sanctity of the operation to be carried out by both these authorities. In order to challenge the grant of sanction as invalid, the grounds that can be urged are that (1) all the relevant material was not placed before the authority; (2) the authority has not applied its mind to the said material; and (3) insufficiency of material. This list is only illustrative and not exhaustive. The common thread that runs through the three grounds of challenge above is that the party putting forward this challenge has to lead evidence to such effect. That, needless to say, can only be done before the Trial Court. In that view of the matter, we have no hesitation in holding that while we recognise the treasured right of an accused to avail all remedies available to him under law, in ordinary circumstances challenge to sanction under UAPA should be raised at the earliest possible opportunity so as to enable the Trial Court to determine the question, for its competence to proceed further and the basis on which



any other proceeding on the appellate side would depend on the answer to this question.

In the attending facts and circumstances of the present case, keeping in view the submission made at the bar that the trial is underway and numerous witnesses (113 out of 125) already stand examined, we refrain from returning any finding on the challenge to the validity of the sanction *qua* the present appellant and leave it to be raised before the Trial Judge, who shall, if such a question is raised decide, it promptly.”

In the case of **Fairoz Pasha** (supra), the Hon’ble Karnataka High Court has held in **paragraph ‘19’** as follows:-

“**19.** Another point raised by Sri. C.V. Nagesh is to be answered now. His argument is that the accused has to wait till the sanctioning authority is summoned, which is usually after other material witnesses are examined. To this answer is that, the practice has been to summon the sanctioning authority after other material witnesses, other than investigating officer, are examined. There is no mandate that the witnesses are to be examined in a particular order, but the investigators will be examined at the end. This procedure is adopted to duly prove contradictions if any, through the investigating officer as contemplated under Section 162 of Cr. P.C. So far as sanctioning authority is concerned, he can be examined in the beginning itself. If the accused is so sure that sanction order is invalid and for this reason there is no need to examine all the witnesses, he can request the court to examine the sanctioning authority in the beginning itself. After the charges are framed, the court can



summon the sanctioning authority and examine the validity of sanction order. If the sanction is found to be invalid, there is no need to hold further trial, and the accused can be discharged even at that stage. This observation is of course made with a rider that the prosecution can obtain fresh sanction in that eventuality.”

12. Having regard to the discussions made here-in-above, keeping in view the judgments relied upon and referred by this Court here-in-above and the stand of the learned ASG, this Court sets aside the impugned judgment/order passed by the learned Special Judge NIA and directs the learned Special Judge to consider the application of the appellants as contained in Annexure- ‘4’ afresh and pass a reasoned order thereon within a period of two months from the date of receipt/production of a copy of this judgment.

13. This appeal is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

SUSHMA2/-
barkha/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.07.2026
Transmission Date	17.07.2026

