

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No.130 of 2019

(Against the order dated 5.01.2019 passed in Misc. Criminal Application No.1025 of 2018 passed by the learned Judicial Commissioner-cum-Special Judge, NIA, Ranchi.)

Manoj Kumar
@ Manoj Yadav
@ Manoj Kumar Yadav Appellant

Versus

Union of India through
National Investigation Agency (N.I.A.) Respondent

The matter was taken up through Video Conferencing. Learned counsels for the parties had no objection with it and submitted that the audio and video qualities are good.

CORAM: HON'BLE MR. JUSTICE H.C. MISHRA
HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellant : Mr. R.S. Mazumdar, Sr. Advocate
Mrs. Jasvindar Mazumar, Advocate
Ms. Madhulika Dasgupta, Advocate
For the N.I.A. : Mr. Rohit Ranjan Prasad, Advocate

Reserved on : 08.09.2020

Pronounced on : 14.09.2020

H.C. Mishra, J.:- Heard learned senior counsel for the appellant and learned counsel for the National Investigation Agency (NIA).

2. This appeal, preferred under Section 21(4) of the National Investigation Agency Act, 2008, is directed against the order dated 5.01.2019, passed by the learned Judicial Commissioner-cum-Special Judge, NIA, Ranchi, (hereinafter referred to as 'NIA Court'), in Misc. Criminal Application No.1025 of 2018, in connection with Special (NIA) Case No.06 of 2018, RC-21/2018/NIA/DLI, arising out of Dumri (Giridih) P.S. Case No.06 of 2018, whereby the bail application of this appellant has been rejected by the NIA Court.

3. According to the NIA's case, the appellant was apprehended on 22.01.2018 while he was going on a motorcycle. The informant Police Officer tried to stop the motorcycle for checking, when this appellant started fleeing away and he was apprehended with the help of the police personnel

present there. Upon search, rupees six lakhs was recovered from the appellant along with naxal pamphlets and two dual SIM mobile phones. Upon interrogation, the appellant confessed that he used to work for the maoist leader Krishna Da, and he used to collect levy on his behalf. The recovered amount from appellant was also the levy amount, which he had collected on the basis of a letter handed over to him by the said terrorist Krishna Da, which letter was also recovered from the appellant, written on the back side of a nuxal pamphlet. The appellant was taken into custody and police case, being Dumri (Giridih) P.S. Case No.6 of 2018 was instituted against him for the offences under Sections 386 and 120B of the Indian Penal Code, Sections 13, 16, 17, 20, 21 and 23 of Unlawful Activities (Prevention) Act and also under Section 17 of the CLA Act. The charge-sheet was also submitted against the appellant by the police. Subsequently, the investigation was taken up by the NIA.

4. Learned senior counsel for the appellant has submitted that the appellant has been falsely implicated in this case. It is submitted that the appellant had also purchased a JCB machine worth Rs.24,000,00/- and odd, and this fact is also being taken against the appellant, but he could account for the money spent in purchasing the said machine. He had no connection with the banned terrorist organization, and he is in custody since the date of his arrest. Learned senior counsel has submitted that the appellant has been falsely implicated in this case and has prayed for bail.

5. Learned counsel for the NIA has opposed the prayer and has submitted that during investigation by the NIA, it was found that the transactions of huge amount of money were made from the bank account of the appellant, which were beyond his known income. It was also found that the appellant was only an employee in a construction company, from where he used to get only Rs. 8,000/- per month as salary, and he did not have sufficient means for such transactions of huge amount of money from his bank account. The appellant had also purchased a JCB machine worth Rs.24,000,00/- and odd. The appellant had confessed his guilt and had also confessed to be working for the terrorist group and collecting levy for them. While the appellant was apprehended with the levy amount of rupees six lakhs, one nuxal pamphlet was also recovered from him, on the back side of which it was written "*Priya Comrade Lal Salaam, Aage Sangathan ke saath*

ekraar kia hua rashi, sandesh vahak sathi se bhej denge. BHA. KA. PA. (Maowadi)". Learned counsel accordingly, submitted that during the investigation, it was found that this appellant was closely linked with the terrorist group and was collecting the levy for them. As such, he cannot be granted bail, as Section 43-D (5) of the Unlawful Activities (Prevention) Act, stands as a bar for granting bail in such cases. Learned counsel for the NIA accordingly, submitted that there is no illegality in the impugned Judgment passed by the NIA Court, rejecting his prayer for bail, and this appeal is fit to be dismissed.

6. Having heard learned counsels for both the sides and upon going through the record, we find that the appellant was apprehended with huge amount of money, which is said to be the amount of levy collected by the appellant for the terrorist group. The nexal pamphlet, which was also recovered from the appellant, also supports the fact that he was closely associated with the terrorist organization, and shows that he was authorized by the terrorist organization to collect the money for them. His introduction in the letter for collecting the levy, on the back side of the pamphlet as "*sandesh vahak sathi*", shows that the appellant was in close association with the terrorist organization. As such, at this stage, it cannot be held that the accusation against the appellant is not *prima facie* true.

7. Section 43-D (5) of the Unlawful Activities (Prevention) Act reads as follow:-

"43-D. Modified application of certain provisions of the Code. –

(1) to (4) -----.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima face true."

8. A plain reading of this provision clearly shows that if the accusation is found to be *prima facie* true, Section 43-D(5) of the UA(P) Act, acts as a clear bar for granting bail to the accused. The same view has been

taken by the Hon'ble Apex Court in **National Investigation Agency Vs. Zahoor Ahmad Shah Watali**, reported in (2019) 5 SCC 1, holding that there is a high burden on the accused in terms of the special provisions contained in Section 43-D(5) of the UA(P) Act to demonstrate that the prosecution has not been able to show that there exist reasonable grounds for believing that the accusation against such person is *prima face* true (Para 47).

9. In view of the materials brought before this Court by the NIA, we find that the accusation against the appellant is *prima facie* true. Learned counsel for the appellant failed to demonstrate before us that the accusation against the appellant may not be *prima facie* true. As such, in the facts of this case, the appellant is not entitled to the privilege of bail, and Section 43-D (5) of the Unlawful Activities (Prevention) Act is a clear bar in granting the relief, sought for, by the appellant

10. Accordingly, we do not find any illegality in the impugned order dated 5.01.2019 passed by the NIA Court, in Misc. Criminal Application No.1025 of 2018, rejecting the prayer for bail of the appellant, worth any interference by this Court.

11. There is no merit in this appeal and the same is accordingly, dismissed.

(H.C. Mishra, J.)

Rajesh Kumar, J.:-

(Rajesh Kumar, J.)

Jharkhand High Court, Ranchi.
Dated, the 14th of September, 2020.
R. Kumar/NAFR