

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr. Appeal (D.B.) No. 104 of 2020**

(Against the order dated 20.12.2019 passed by the learned Judicial Commissioner-cum-Special Judge, NIA, Ranchi in Misc. Cr. Application No. 620 of 2019.)

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Birbal Ganjhu ..... Appellant  
Versus  
Union of India through  
National Investigation Agency .... Respondent  
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**PRESENT**

**HON'BLE MR. JUSTICE H.C. MISHRA**  
**HON'BLE MR. JUSTICE RAJESH KUMAR**

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For the Appellant: : M/s. R.S. Mazumdar, Sr. Advocate  
For the Respondent : : M/s.Rohit Ranjan Prasad, Spl. P.P. for N.I.A.  
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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 were good.  
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**C.A.V. on 19.06.2020**

**Pronounced on 24.06.2020**

***H.C. Mishra, J. :-*** Heard learned senior counsel for the appellant and the learned Special P.P. of the Investigating Agency (in Short "NIA").

2. This appeal, preferred under Section 21 of the National Investigation Agency Act, 2008, is directed against the order dated 20.12.2019, passed by the learned Judicial Commissioner-cum-Special Judge, N.I.A, Ranchi, (herein after referred to as the 'Designated Court'), in Misc. Cr. Application No.620 of 2019, Special (N.I.A) Case No.03 of 2018, R.C No.06/2018/NIA/DLI, arising out of Tandwa P.S Case No.02 of 2016, rejecting the regular bail application filed by the appellant Birbal Ganjhu, who has been made accused for the offences under Sections 414, 384, 386, 387 r/w Section 120-B of the Indian Penal Code, Sections 25(1-B) (a), 26 & 35 of the Arms Act, Section 17(1)(2) of the Criminal Law Amendment Act, 1908, (hereinafter referred to as the 'CLA Act') and Sections 17, 18 & 20 of the Unlawful Activities (Prevention) Act (hereinafter referred to as "UA(P) Act").

3. The case was originally instituted for the offences under Sections 414, 384, 386, 387 & 120-B of the Indian Penal Code,

Sections 25 (1-B) (a), 26 & 35 of the Arms Act and Section 17(1)(2) of the CLA Act, on the basis of a secret information received by the Police, regarding realization / extortion of levy by the banned unlawful association / terrorist gang *Tritiya Prastuti Committee* (for short 'TPC'), in the coal region of Amarpali / Magadh Projects of Central Coalfield Ltd., (in short 'CCL') from the contractors, transporters, D.O. (Delivery Order) holders and coal traders. On such information, the house of one Binod Kumar Ganjhu was raided on 11.01.2016, from where, an amount of Rs.91,75,890/- and two mobile phones were recovered. The appellant Birbal Ganjhu and one Munesh Ganjhu were also found there in suspicious condition, and loaded Mouzer pistol was recovered from the appellant, whereas country made pistol and cartridges were recovered from Munesh Ganjhu. All the three were apprehended by the police, who confessed their proximity with the banned unlawful association / terrorist gang TPC. On the basis of the disclosure of Binod Ganjhu, the house of one Pradeep Ram was raided, from where also, Rs.57,57,710/- and four cell phones were recovered. Accordingly, Tandwa P.S Case No. 02 of 2016 was instituted for the offences under Sections 414, 384, 386, 387 & 120-B of the Indian Penal Code, Sections 25 (1-B) (a), 26 & 35 of the Arms Act and Section 17 (1) (2) of the CLA Act, and investigation was taken up. Subsequently, taking into consideration the gravity of the offence, the Central Government, by order dated 13.02,2018, directed the N.I.A. to take over the investigation of the case, and Sections 16, 17, 20 & 23 of the UA(P) Act were also added.

4. After investigation, the police submitted the charge-sheet in the case, making the appellant also an accused. During investigation, the nexus between the CCL officials, the other stake holders and the members of the banned unlawful association / terrorist gang TPC was revealed. After the arrest itself the appellant and the other arrested persons had confessed their proximity with TPC, and in course of investigation by the NIA also, the statements of the witnesses were recorded which show that the appellant was actively engaged in the activities of TPC. It was revealed during investigation that TPC operatives used to exhort levy from the coal contractors. The

*modus operandi* of TPC was that they initially blocked the mining process in Amarpali and Magadh areas and then as a part of their plan of conspiracy, they formed the Village Committees with their own men to start the mining process. They imposed levy amount on coal transportation and initially, in a meeting with the TPC, it was decided that an amount @ Rs.254/- PMT of coal would be collected from each transporter and D.O. Holders in the name of the Village Committee and the said amount would be distributed amongst various stake holders, including the members of TPC, officials of CCL, the police officials, Pollution & Forest Department and even the Media and Press. Subsequently, in another meeting with the TPC, the amount was reduced to Rs. 200/- PMT from the month of July, 2015. During investigation by the NIA the statements of the witnesses and protected witness were also recorded which show that the appellant was also actively engaged in the activities of the banned unlawful association / terrorist gang TPC, and about 50 to 60 persons, who had dared to raise their heads against the activities of this gang were murdered in Piparwar area. They had connections in Government also and one senior police officer, who tried to check the menace of TPC, was transferred within a short period of time. In Amrapali area the said gang had also made an attack on the police picket. Even the confessional statements of this appellant was also recorded by the NIA, in which also the appellant had admitted that he continued as a supporter of TPC, but again he had given the details of the activities of the TPC and also stated that he was in regular touch with the commanders of the TPC and he used to roam with them in the village and nearby areas. He has also admitted to have committed the offence of murder along with the members of the TPC. He has also admitted that due to his closeness with the Zonal Commander of the TPC, he was also made a member of the village committee, on remuneration basis. Other incriminating materials were also collected against the appellant by the NIA.

5. It may be stated at this stage that while the case was not handed over to the NIA, and the offences under UA(P) Act were not added by the police, the appellant was granted bail by this Court by order dated 11.11.2016, passed in B.A. No. 9342 of 2016. However, in

view of the incriminating materials found during investigation, and also because of the fact that the appellant was allegedly violating the conditions of bail, on the prayer of the Investigating Officer of the NIA, the Designated Court issued non-bailable warrant of arrest against the appellant. The appellant remained absconding, and subsequently he was arrested in connection with another case, being Tandwa P.S. Case No. 22 of 2018, and he was remanded in the present case on 01.05.2019, and he is in custody since then.

6. Considering the materials on record, the Designated Court has rejected the bail application of the appellant, taking into consideration the proviso of Section 43-D(5) of the UA(P) Act, which prescribes that the accused person shall not be released on bail, if on the perusal of the case diary or the report made under Section 173 of the Cr.P.C., the Court is of the opinion that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true.

7. Learned senior counsel for the appellant has submitted that the Designated Court below has committed patent illegality in rejecting the bail application of the appellant, particularly in view of the fact that the appellant had been granted bail by the High Court, and in that view of the matter the appellant could not be taken into custody. It is submitted and pointed out by learned senior counsel from the statements of the witnesses, that most of the witnesses examined by the NIA are the police witnesses and they have stated nothing new other than the material already there in the investigation made by the police, for which the appellant had already been granted bail by this Court. This apart, there is only a confessional statement of the appellant before the NIA, which has no evidentiary value. Learned senior counsel also contended that TPC is not a banned terrorist organization, as detailed in Schedule to the UA(P) Act.

8. Learned senior counsel further submitted that since the appellant was already on bail granted by the High Court, he could not have been taken into custody without cancelling the earlier bail of the appellant, only due to addition of the offences under the UA(P) Act. In this connection learned senior counsel has placed reliance upon a decision of the Hon'ble Apex Court in **Pradeep Ram Vs. State of**

**Jharkhand & Anr**, reported in *2019 SCC OnLine SC 825*, which arises out of the same case.

9. Learned senior counsel has further vehemently argued that there is no material in the charge-sheet to show that the appellant was ever involved in raising, collecting or providing the fund for the terrorist activities. Learned senior counsel accordingly, submitted that the impugned order passed by the Designated Court below cannot be sustained in the eyes of law, and it is a fit case in which the appellant ought to have been released on bail.

10. Learned Spl. P.P. of the NIA on the other hand has opposed the prayer, and has drawn our attention towards the statements of the witnesses, the protected witness and the confessional statement of the appellant himself recorded by the NIA, as mentioned above, to show that the appellant is an active member of the banned unlawful association / terrorist gang TPC. Learned Special P.P. has further pointed out that after granting bail by this Court, the offences under the UA(P) Act were also added against the appellant on the basis of the materials collected during investigation, and it was on the prayer of the NIA that NBW of arrest was issued against the appellant. However, the appellant could not be arrested on the basis of the warrant, but he was arrested in connection with another case and then remanded in this case and taken into custody. Learned Special P.P. has pointed out that the law is well settled in **Pradeep Ram's** case (*supra*), and even that accused was on bail, and upon subsequent addition of the new offences, that accused was taken into custody under the orders of the Designated Court, which was affirmed by the Apex Court. Learned Special P.P. has also pointed out that in the present case also, on the prayer of the NIA, the order was passed by the Designated Court for issuing non-bailable warrant against the appellant as well, which order is not under challenge in the present proceeding.

11. Learned Spl. P.P. for the N.I.A., submitted that since there are materials on record to show that the accusation against the appellant is *prima facie* true, no case for bail is made out, in view of the specific provision of Section 43-D(5) of the UA(P) Act and accordingly, there is no illegality in the impugned order

dated 20,12,2019 passed by the Designated Court below, rejecting the bail application of the appellant.

12. Having heard learned counsels for both the sides and upon going through the record, we are of the considered view that it would not be appropriate at this stage to deal with the evidence found against the appellant during investigation in detail, and suffice would be to observe that the materials brought on record by the NIA show that at this stage it cannot be opined that the accusations against appellant is not *prima facie* true. There are materials in the charge-sheet, i.e., the statements of the witnesses, including the statement of a protected witness, as also the confessional statement of the appellant before the NIA, as detailed above, which clearly show the active participation of this appellant in the activities of the banned unlawful association / terrorist gang TPC. Though it is submitted that the confessional statement of the appellant cannot be taken in account, but the fact remains that the confessional statement corroborates the statement of the protected witness to some extent. As such, at this stage it cannot be opined that the accusations against the appellant is *prima facie* not true.

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

***“43D. 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 facie true.”*

14. A plain reading of the aforesaid provision clearly shows that there is a clear bar in granting bail to the accused, if there are materials before the Court for believing that the accusation against the accused is *prima facie* true.

15. So far the contention of the learned senior counsel for the appellant that the appellant could not have been taken into custody without cancelling his bail, this question is fully answered by the Hon'ble Apex Court in **Pradeep Ram's** case (*supra*), who is also an accused in the present case itself. That accused was also granted bail by order dated 10.03.2016 passed by the High Court. Thereafter offences under the UA(P) Act were added against the accused. In the meantime said Pradeep Ram had also been taken into custody in connection with another case. A request was made on behalf of the NIA before the designated Court on 22.06.2018 for issuance of production warrant. The said prayer was allowed and upon his production said Pradeep Ram was remanded to judicial custody by the order of the Designated Court on 25.06.2018. As such the relevant facts of the appellant as well as of Pradeep Ram are exactly the same. Pradeep Ram challenged the order remanding him to the judicial custody before this Court unsuccessfully, and the matter went to the Hon'ble Apex Court. One of the questions framed by the Hon'ble Apex Court was as follows:-

*“Whether in a case where an accused has been bailed out in a criminal case, in which case, subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the accused in custody?”*

The said question was answered by the Hon'ble Apex Court laying down the law as follows:-

*“29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:-*

- (i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.*
- (ii) The investigating agency can seek order from the court under Section 437(5) or 439(2) of Cr.P.C. for arrest of the accused and his custody.*
- (iii) The Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C. can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as*

Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

- (iv) *In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.*” (Emphasis supplied).

16. Thus, from the discussions of the law made by the Hon’ble Apex Court we find no illegality in taking the appellant into custody upon addition of the offences under the UA(P) Act, upon order obtained from the Designated Court.

17. In the result, in view of the special provision of law under Section 43-D(5) of the UA(P) Act, and in view of the fact that there are materials before the Court for reasonably believing that the accusation against the appellant are *prima-facie* true, no case is made out for granting bail to the appellant.

18. In view of the foregoing discussions, we do not find any illegality in the impugned order dated 20.12.2019, passed by the learned Judicial Commissioner-cum-Special Judge, NIA, Ranchi, in Misc. Cr. Application No. 620 of 2019, Special (N.I.A.) Case No. 03/2018, RC-06 /2018/NIA/DLI, arising out of Tandwa P.S. Case No. 02 of 2016, rejecting the bail application of the appellant Birbal Ganjhu, worth any interference by this Court.

19. 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 24<sup>th</sup> of June, 2020.**  
D.S./ N.A.F.R.