IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (D.B.) No. 187 of 2020
With
I.A No. 2805 of 2020

(Against the order dated 14.02.2020 passed by the learned Judicial Commissioner-cum-Special Judge, NIA, Ranchi in Misc.Cr. Application No. 178 of 2020.**)**

Sudesh Kedia … Appellant

Versus

Union of India through
National Investigation Agency,
Camp Office, Ranchi. … Respondent

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

For the Appellant : Mr. Sumeet Gadodia, Advocate
For the N.I.A : Mr. Rohit Ranjan Prasad, Spl. P.P.

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.

C.A.V. on : 12.06.2020 **Pronounced on : 24.06.2020**

H.C. Mishra, J. Heard learned counsel for the appellant and the learned Spl. P.P. for the National Investigation Agency (in short N.I.A.).

2. This appeal, preferred under Section 21 of the National Investigation Agency Act, 2008, is directed against the order dated 14.02.2020, 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.178 of 2020, 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 Suresh Kedia, who has been made accused for the offences under Section 120-B of the Indian Penal Code, read with Sections 17, 18 and 21 of the Unlawful Activities (Prevention) Act, 1967, (hereinafter referred to as the 'UA(P) Act'), and Section 17 of the Criminal Law Amendment Act, 1908, (hereinafter referred to as the 'CLA 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. Two other persons, Birbal Ganjhu and Munesh Ganjhu were also found there in suspicious condition, and loaded firearms and cartridges were recovered from them. 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. It may be stated that in this case, in all three charge-sheets were submitted and until the submission of the first supplementary charge-sheet, the appellant was shown as a witness in the case. The appellant is the Director of a Company, Esskay Minerals Pvt. Ltd., engaged in transportation of coal and other minerals, and during investigation, the nexus between the appellant, the CCL officials and the members of the banned unlawful association / terrorist gang TPC was revealed. 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 the course of investigation by the N.I.A., it was revealed that the present appellant was taking active part in the meetings of TPC, was in close association with the hardcore terrorists and used to pay levy by way of terror funding, for smooth running of his business in Amrapali and Magadh collieries, and during the years 2015-2016, he had paid the sum of Rs.25,00,000/- to the protected witnesses for distribution. He used to send the money to the Village Committee through his current account by bank transfer through RTGS and also through cash, and several documents as detailed in the charge-sheet, were seized as evidence, apart from the statements of the protected witnesses. This appellant was, accordingly, arrayed as an accused with the help of Section 120-B of the Indian Penal Code, read with Sections 17, 18 & 21 of the UA(P) Act, as also under Section 17 of the CLA Act, and was taken into custody on 10.01.2020. Accordingly, the second supplementary charge-sheet was submitted by the N.I.A., in which, the present appellant was also shown as an accused, apart from several other persons, including the officials of the CCL.

5. 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 statements of the witnesses, which have been brought on record by the appellant as also by the N.I.A., would show that the appellant was not only actively and regularly engaged in making payments to the banned unlawful association / terrorist gang TPC, and thus, was involved in terror funding in the regular manner for carrying out his business, and in fact there is evidence of one witness to show that this appellant had also asked other person to make payment of levy to the aforesaid terrorist gang.

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 counsel for the appellant has vehemently argued that whatever money was given by the appellant to the members of the TPC, was under the coercion and threat to his own life. It was never voluntary on the part of the appellant. Accordingly, the action of the appellant would be protected under Section 94 of the Indian Penal Code.

8. Learned counsel for the appellant has also drawn our attention towards the materials in the charge-sheet to show that the members of the banned unlawful association / terrorist gang TPC used to realize the levy, putting the persons under the threat even of death, and in the similar manner they used to threaten the contractors and transporters as well, engaged in the coal business. It is submitted that since the appellant was also under the threat of the members of the banned unlawful association / terrorist gang, he had no option but to make the payments of levy to them. Learned counsel has also drawn our attention towards the statements of one witness to show that the terrorist gang TPC had high connections in the Government, and a senior Police Officer trying to stop the menace, was transferred within a short period of time. Thus, though on the factual aspects, it is an admitted position by the learned counsel for the appellant that levy used to be paid by the appellant to the banned unlawful association / terrorist gang TPC, but it is contended such funding was never voluntary on the part of the appellant, rather it was under the imminent threat to his life.

9. Learned counsel has placed reliance upon a decision of the Hon'ble Apex Court in **Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra & Anr.,** reported in *2005 (5) SCC 294,* which relates to the bail matter arising out of Maharashtra Control of Organized Crime Act, 1999 (for short "MCOCA"). In this case, the Hon'ble Apex Court has also interpreted Section 21 (4) of the "MCOCA", which reads as follows:-

> *"21 (4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless-*

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

Interpreting this provision, the Hon'ble Apex Court has laid down the law as follows:-

"38. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

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44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction

of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

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46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

(Emphasis supplied).

10. Learned counsel has further placed reliance upon a decision of the Hon'ble Apex Court in **National Investigation Agency Vs. Zahoor Ahmad Shah Watali,** reported in *2019 (5) SCC 1,* wherein the Hon'ble Supreme Court has, while dealing with the bail matter arising out of the case under UA(P) Act, taking into consideration Section 43-D(5) of the said Act, as also taking into consideration its earlier decision in **Ranjitsing Brahmajeetsing Sharma's** case *(supra),* has laid down the law as follows:-

"24. A priori, the exercise to be undertaken by the Court at this stage—of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is

merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."

11. Learned counsel has further submitted that admittedly, until the submission of two charge-sheets, i.e., the original charge-sheet and the first supplementary charge-sheet, the appellant was only a witness in the case and he was always cooperating with the investigation of the case. It is submitted that in the garb of further investigation by the NIA, the earlier investigation made by the police cannot totally be wiped away and the appellant could not be arrayed as an accused in the case in the garb of further investigation. In this connection, learned counsel has placed reliance upon the decision of the Hon'ble Apex Court in **Vinay Tyagi Vs. Irshad Ali & Ors.,** reported in *2013 (5) SCC 762,* wherein it has been held as follows:-

"*22. "Further investigation" is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the executive. It is the continuation of previous investigation and, therefore, is understood and described as "further investigation". The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as "supplementary report". "Supplementary report" would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a "reinvestigation", "fresh" or "de novo" investigation."*

(Emphasis supplied).

12. Learned counsel has also placed reliance upon the decision of the Hon'ble Apex Court in **State of Kerala Vs. Raneef**, reported in *2011 (1) SCC 784,* wherein, the law has been laid down as follows:-

> *"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. ----------."*

13. It may be stated at this place itself that this is only the general principle of granting bail and though this case was also arising out of UA(P) Act, but the Hon'ble Apex Court before laying down the law as aforesaid, had already given a finding on the basis of the materials on record of that case, that there was no *prima facie* proof that the accused was involved in the crime (Para 8 of the referred Judgement).

14. Learned counsel for the appellant has also submitted that the penal statutes are to be construed strictly and the alleged offence must be brought within the word and spirit of the offence alleged. In support of this submission, learned counsel has placed reliance upon the decision of the Hon'ble Apex Court in **M. Narayanan Nambiar Vs. State of Kerela,** reported in *1963, Supp (2) SCR 724* and in **G.N Verma Vs. State of Jharkhand & Anr.,** reported in *2014 (4) SCC 282*. It is further submitted by the learned counsel that if two constructions are possible upon the language of the statute, the Court must choose the one, which is consistent with the good sense and fairness, and not the one which makes its operation unduly oppressive, unjust, or unreasonable. In this connection, learned counsel has placed reliance upon the decision of the Hon'ble Apex Court in **Dilip Kumar Sharma & Ors. Vs. State of Madhya Pradesh,** reported in 1976 (1) SCC 560.

15. Learned counsel has vehemently argued that since the appellant was compelled to give money to the banned unlawful association / terrorist gang under threat, it cannot be said that the appellant was actually involved in directly or indirectly raising or providing fund or collecting the fund for the terrorist gang, and as such, the offence under Section 17 of the UA(P) Act cannot be said to be made out against the appellant. Mainly, with these submissions, learned counsel for the appellant submitted that the

impugned order passed by the Designated Court cannot be sustained in the eyes of law and this is a fit case in which the appellant ought to have been released on bail.

16. Learned Spl. P.P. for the N.I.A., on the other hand, has opposed the prayer and has drawn our attention towards the statements of witnesses, recorded by the NIA, after the submission of the first supplementary charge sheet, which as stated above, *prima facie*, showed that the appellant used to make payments to the banned unlawful association / terrorist gang TPC for running his own business. He had made transactions of huge amounts not only in cash, but also through bank transfer through RTGS from his current account, and to cap all, the materials on record, *prima facie,* show that the transactions were made by the appellant on the regular basis and not occasionally, as and when any alleged threat to life was given. The materials on record also show that the appellant was in regular touch with the members of the banned unlawful association / terrorist gang TPC, and he used to attend their meetings also.

17. It is submitted by the learned Spl. P.P. for the N.I.A., that most of these evidences were collected after the submission of the first supplementary charge-sheet and accordingly, the appellant has been made accused and second supplementary charge-sheet was submitted by the N.I.A. As such, there is no question of wiping away the earlier investigation made by the police, as submitted by the learned counsel for the appellant.

18. Learned Spl. P.P. for the N.I.A., has also placed reliance upon the decision of the Hon'ble Apex Court cited by the learned counsel for the appellant in **Zahoor Ahmad Shah Watali's** case *(supra).* It is pointed out by learned Spl. P.P. that in the said case, the Hon'ble Apex Court had discussed the provisions of Section 43-D(5) of the UA(P) Act, and though in the facts of this case, the accused in that case was granted bail by the High Court, the Judgment of the High Court was set aside and the order passed by the Designated Court, rejecting the bail application of the accused, was affirmed by the Apex Court. Learned Spl. P.P. for the N.I.A has pointed out from the said Judgment, wherein, it has been held by the Apex Court that for consideration of bail matters arising out of cases under special enactments, something more is required to be kept in mind, in view of the special

provision as contained in Section 43-D(5) of the UA(P) Act, and the law has been laid down as as follows:-

> *"26. Be it noted that the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. To wit, soon after the arrest of the accused on the basis of the FIR registered against him, but before filing of the charge-sheet by the investigating agency; after filing of the first charge-sheet and before the filing of the supplementary or final charge-sheet consequent to further investigation under Section 173(8) CrPC, until framing of the charges or after framing of the charges by the Court and recording of evidence of key witnesses, etc. However, once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case."*
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> *47. The fact that there is a high burden on the accused in terms of the special provisions contained in Section 43-D(5) to demonstrate that the prosecution has not been able to show that there exist reasonable grounds to show that the accusation against him is prima facie true, does not alter the legal position expounded in K. Veeraswami, to the effect that the charge-sheet need not contain detailed analysis of the evidence. It is for the Court considering the application for bail to assess the material/evidence presented by the investigating agency along with the report under Section 173 CrPC in its entirety, to form its opinion as to whether there are reasonable grounds for believing that the accusation against the named accused is prima facie true or otherwise."* (Emphasis supplied).

19. Learned Spl. P.P. for the N.I.A., accordingly, 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 14.02.2020 passed by the Designated Court below, rejecting the bail application of the appellant.

20. Having heard the learned counsels for both the sides and upon going through the record, we find from the materials brought on record by the N.I.A, that at this stage, it cannot be opined that the accusation against the appellant is not *prima facie* true. The funding by the appellant to the banned unlawful association / terrorist gang TPC is an admitted fact, and though it is the case of the appellant that the fundings were made under the threat of life, the submission that the appellant shall be protected under Section 94 of the Indian Penal Code, cannot be accepted at this stage. The materials on record clearly show that it is not the case that the fundings were made by the appellant to the said outfit occasionally as and when he was put under any threat, rather the materials clearly show that the appellant was in constant touch with the members of the terrorist gang in order to run his business. Even he used to attend their meetings and the transactions of huge amount were made in regular manner, both in cash and from the bank account through RTGS from the appellant's current account. As such, this is *prima facie,* a case of terror funding by the appellant and it cannot be said that the acquisition against the appellant is *prima facie* not true.

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

> ***"43D. Modified application of certain provisions of the Code.--***
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> *(1) to (4) ----------.*
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> *(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:*
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> *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."*

22. A plain reading of the aforesaid provision clearly shows that there is 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.The reliance placed by the learned counsel for the appellant in **Raneef's** case *(supra),* is of no help to the appellant, in view of the fact that in the said case the Hon'ble Apex Court had given a clear finding that there was no *prima facie* proof that the accused was involved in the crime. Even the law laid down by the Hon'ble Apex Court in **Zahoor Ahmad Shah Watali's** case *(supra),* does not support the appellant, rather it fully supports the stand of the N.I.A.

23. In view of the specific provision of law as aforesaid and in view of the fact that there are materials before the Court for reasonably believing that the accusation against the appellant accused are *prima facie* true, no case is made out for granting bail to the appellant.

24. In view of the foregoing discussions, we find no illegality in the impugned order dated 14.2.2020 passed by the learned Judicial Commissioner-cum-Special Judge, N.I.A., Ranchi, in Miscellaneous Criminal Application No.178 of 2020, 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 bail application of the appellant Sudesh Kedia, worth any interference by this Court.

25. There is no merit in this appeal and the same is accordingly, dismissed. The pending interlocutory application also stands dismissed.

(H. C. Mishra, J.)

Rajesh Kumar, J.:-

(Rajesh Kumar, J.)

Jharkhand High Court, Ranchi.
Dated the 24th of June, 2020.
BS./ NAFR