

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.350 of 2024

Arising Out of PS. Case No.-14 Year-2018 Thana- NIA District- Patna

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Dilip Sahani @ Niteshji S/o Late Shivnandan Sahani R/o Village
Kazipur Thathan, P.S. Hajipur sadar, District Vaishali

... .. Appellant/s

Versus

1. Union of India through Director General, National Investigation Agency Patna
2. The State of Bihar

... .. Respondent/s

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National Investigation Agency Act, 2008--- Section 19, 21(4)--- Arms Act--- Sections 25(1B)(a), 25(1A), 25(1AA), 25(1AAA), 26(2), 35--- Explosives Substances Act---section 3, 4--- Unlawful Activities (Prevention) Act, 1967--- Sections 16, 17, 18, 20, 22, 23, 43(D)(5)---Code of Criminal Procedure--- section 164---appeal against order passed by the learned Special Judge, N.I.A., Patna rejecting the bail application filed by the appellant herein--- allegation against appellant is of getting involved in naxal and maoist activities---argument on behalf of appellant that except the confessional statement of the co-accused, there is no material against the appellant though the trial has commenced, out of 123 witnesses, till date only 42 witnesses have been examined and that he is in judicial custody for more than 6 years. Held: from the case diary as well as the investigation papers, prima facie, it can be said that the appellant is involved in the alleged activities and, therefore, the provisions contained in Section 43(D)(5) of the UA(P) Act are attracted and appellant is not entitled to be released on bail---also there are five criminal antecedents of the present appellant---appeal dismissed. (Para 1, 4, 6, 14-16)

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... .. Appellant/s

Versus

- 1. Union of India through Director General, National Investigation Agency
Patna
- 2. The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vasant Vikas, Advocate
For the Respondent/s : Dr. K.N. Singh (A.S.G.)
Mr. Manom Kumar Singh, Spl. P.P. (N.I.A.)
Mr. Ankit Kumar Singh, Advocate
Mr. Shivaditya Dhari Sinha, A.C. to A.S.G.

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 25-07-2024

The present appeal has been filed under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter, referred to as ‘N.I.A. Act’) against the order dated 19.02.2024 passed by the learned Special Judge, N.I.A., Patna in Special Case No. 03/2018 (arising out of N.I.A. Case No. RC-14/2018/NIA/DLI dated 14.04.2018 registered on the basis of Muzaffarpur Sadar P.S. Case No. 166 of 2018), whereby the learned Special Judge, N.I.A. has rejected the bail application filed by the appellant herein.



2. Heard learned counsel Mr. Vasant Vikas for the appellant and Dr. K.N. Singh, learned A.S.G. for the Respondent assisted by Mr. Manoj Kumar Singh, Mr. Ankit Kumar Singh and Mr. Shivaditya Dhari Sinha.

3. Learned counsel for the appellant submits that, by way of the impugned order, the learned Special Judge, N.I.A., Patna has rejected the prayer for bail made by the appellant in connection with Special Case No. 03/2018 (arising from N.I.A. Case No. RC-14/2018/NIA/DLI dated 14.04.2018) registered for the offences punishable under Sections 25(1B)(a), 25(1A), 25(1AA), 25(1AAA), 26(2) and 35 of the Arms Act, Sections 3 and 4 of the Explosives Substances Act and Sections 16, 17, 18, 20, 22 and 23 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as UA(P) Act).

4. It is submitted that, as per the case of the prosecution, the information was received that one Anil Ram, Commander of Muzaffarpur-Vaishali Sub-Zonal Committee of prohibited CPI (Maoist), was living as a tenant in the house of one Manoranjan Singh. On the basis of the said information, the Special Task Force, Bihar raided the said house on 17/18.03.2018 and arrested Anil Ram, Dilip Kumar and Sunil Kumar Ram. It is further alleged that one country-made loaded carbine, live ammunition, five



detonators, two motorcycles, cash of ₹8,93,300/-, naxal literatures and several other documents of vehicle, properties etc. were seized from the said premises. At this stage, it is submitted that, after the aforesaid accused were arrested, on the basis of the confessional statement of the arrested accused, the present appellant has been implicated. The said confessional statement was recorded under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter, referred as the 'Code') before the learned Magistrate. It is further submitted that, except the aforesaid confessional statement of the co-accused, there is no material against the present appellant.

5. Learned counsel for the appellant would further submit that, as per the case of the prosecution, search was conducted at the house of the appellant on 04.07.2018 and it is alleged that, during the said search, various investment papers, documents and sale deeds of three properties along with ₹46,000/- cash were recovered. It is submitted that no arms or ammunition were recovered from the premises of the appellant.

6. Learned counsel for the appellant thereafter contended that the appellant is in custody since 20th June, 2018 and though the trial has commenced, out of 123 witnesses, till date only 42 witnesses have been examined and, therefore, the trial would not be concluded in near future. Learned counsel, at this stage, has



referred the provisions contained in Section 19 of the N.I.A. Act, 2008 and submitted that the trial of any offence under this Act is required to be conducted on day-to-day basis. Learned counsel, therefore, urged that the appellant be released on bail.

7. Learned counsel has placed reliance upon the recent order dated 08.07.2024 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No(s). 2319/2024. It is submitted that, in the said case, on the ground of delay in proceeding with the trial, the Hon'ble Supreme Court has released the concerned petitioner on bail.

8. On the other hand, learned A.S.G. for the Respondent-N.I.A. has opposed the present appeal. Learned A.S.G., at the outset, submitted that there is ample evidence against the appellant from which, *prima facie*, it can be said that the appellant has been involved in the alleged activities and, therefore, has per the provisions contained in Section 43(D)(5) of the UA(P) Act, the appellant is not entitled to be released on bail.

9. Learned A.S.G. has referred the counter-affidavit filed on behalf of the Respondent-N.I.A. and thereafter contended that there is ample evidence in the papers of the charge-sheet against the present appellant. It is contended that though the appellant is not named in the F.I.R., on the basis of the confessional statement



of the co-accused recorded under Section 164 of the Code, the appellant has been arrested. It is further submitted that the statement of the protected witnesses were also recorded and the said witness have also supported the facts disclosed by co-accused Anil Ram, Musafir Sahni, Kamlesh Bhagat and Sanjay Ram @ Abhay in their statement recorded under Section 164 of the Code. It is further submitted that the protected witnesses have also stated that the present appellant has extorted money from them on several occasions on the pretext of funding CPI (Maoist). It is further submitted that the search was also conducted at the rented flat of Anil Ram and, during the said search, incriminating material was recovered and seized. The co-accused have further stated in their statement recorded under Section 164 of the Code that the appellant used to provide money and weapons to the party cadres for disruptive activities and, in fact, protected witnesses have also stated that the appellant has extorted levy money from brick-kiln owners and construction companies executing road construction in Vaishali-Muzaffarpur area with intent to raise funds for furthering the activities of proscribed organisation CPI (Maoist).

10. Learned A.S.G. thereafter contended that when the house of the appellant was searched, various investment papers and documents were recovered which include the sale-deed of



three properties. Certain other investment documents were also found from the place of the appellant. A handwritten write-up, having incriminating contents was also recovered from the house of the appellant. Learned A.S.G., therefore, urged that there is sufficient evidence collected by the prosecution against the appellant herein.

11. Learned A.S.G. thereafter submitted that the two other co-accused, namely Sanjay Ram and Dilip Ram filed separate Criminal Appeal (DB) No. 434 of 2020 and 438 of 2020 and Criminal Appeal (DB) No. 438 of 2020 respectively. This Court vide order dated 21.12.2022 and 10.07.2024 has dismissed the appeals filed by the co-accused. Learned A.S.G., therefore, urged that this Court may not entertain the present appeal.

12. Learned A.S.G. has further submitted that the Coordinate Bench, while passing the order dated 10.07.2024, has considered the fact of delay in trial in Para-7 of the order and thereafter considering the gravity of the offence and after considering the submission of the learned counsel for the Respondent-N.I.A., rejected the appeal filed by the co-accused and, therefore, when the prosecution has already examined 42 witnesses, in view of the observation made in Para-7 and 8 of the aforesaid order, this Court may not entertain the present appeal.



13. Learned A.S.G., at this stage, pointed out from Para-3 of the memo of appeal that there are criminal antecedents of the appellant and five F.I.R.'s have been registered against him. Thus, on this ground also, the appellant may not be released on bail.

14. We have considered the submissions canvassed by the learned counsels and we have also perused the material placed on record including the counter-affidavit filed by the Respondent. We have also perused the case-diary and the papers of the charge-sheet including the confessional statement of the co-accused recorded under Section 164 of the Code and the statement of the protected witnesses. From the aforesaid material, it would emerge that the appellant is not named in the F.I.R. However, during the course of investigation, when the statement of the three co-accused recorded under Section 164 of the Code before learned Magistrate, it was not revealed that the present appellant is also involved in the crime in question. From the house of rented premises of one of the co-accused, incriminating material including the arms and ammunition were found. When the premises of the present appellant was searched, certain documents and investment papers were also recovered by the Respondent-Agency. From the statement of the protected witnesses also, *prima facie*, it is revealed that the allegation is levelled against the appellant that he



was extorting money from the brick-kiln owners and construction companies executing road construction in Vaishali-Muzaffarpur area. The co-accused have also stated that the appellant herein was providing the fund for the CPI (Maoist) activities. Thus, from the case diary as well as the investigation papers, *prima facie*, it can be said that the appellant is involved in the alleged activities and, therefore, the provisions contained in **Section 43(D)(5)** of the **UA(P) Act** are attracted which provides as under:-

“43(D)(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.”

15. As discussed hereinabove, there is ample material against the appellant herein in the case diary as well as in the investigation papers. It is true that the appellant is in custody since 20th June, 2018. However, while considering the similar appeal filed by the co-accused Dilip Ram, the Coordinate Bench of this Court has observed in Para 7 & 8 as under:-



“7. It is submitted that considering the overwhelming materials on the record, the seriousness of the offences alleged and the severity of the punishment attached to the offence, the appellant does not deserve the privilege of bail. So far as the delay in the trial is concerned, it is submitted that a substantial period had been lost because of the intervening unprecedented pandemic during March, 2020 to the end of the year 2021. Learned counsel has pointed out that now the list of witnesses has been tuned and only 102 witnesses are to be examined out of which 35 witnesses have already been examined. It is submitted that the trial court is fixing slots and there is a plan to examine at least four to six witnesses every month, therefore the trial is likely to take a little more than a year, including the intervening holidays and vacations.

8. Having regard to the submissions noted hereinabove, the kind of materials discussed in the impugned order as well as the submissions of the parties and considering the gravity of the offences alleged against the appellant and there being chance of conclusion of trial in a little more than one year, we are not inclined to interfere with the impugned order.”

16. At this stage, it is pertinent to note that the appellant himself has stated in Para-3 of the memo of appeal that there are other five F.I.R.’s registered against him. Thus, there are criminal antecedents of the present appellant. We have also perused the order dated 08.07.2024 passed by the Hon’ble Supreme Court in Special Leave to Appeal (Crl.) No(s). 2319/2024 and looking to the aforesaid facts and circumstances of the present case, including the five criminal antecedents of the appellant herein, we are not



inclined to entertain the request made by the appellant for grant of
bail.

17. Accordingly, the appeal stands dismissed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	29.07.2024
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