

Dharmender Singh @ Gugny vs National Investigation Agency on 12 November, 2024

Author: Prathiba M. Singh

Bench: Prathiba M. Singh, Amit Sharma

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IN THE HIGH COURT OF DELHI AT NEW

DHARMENDER SINGH @ GUGNY

Through: Mr. Amit Agni
Makkar & Mr.
Advs.

versus

NATIONAL INVESTIGATION AGENCY

Through: Ms. Shilpa S
Zeenaat Malic
Aggarwal, Ad

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% 12.11.2024

1. This hearing has been done through hybrid mode.

2. This is an appeal under Section 21(4) of the National Investigation Agency Act assailing the impugned judgment/order dated 26th April, 2024 passed by Id. ASJ-03, N.D.D, Patiala House Courts, New Delhi, in RC No. 24/2017/NIA/DLI arising out of FIR No. 27/2016 registered at P.S. Jodhewal, Ludhiana, under Sections 307/34 of IPC and Section 25 of the Arms Act, 1959, whereby, the application seeking bail filed by the Appellant has been rejected by the Special Court.

3. The allegation against the Appellant is that he is involved in supply of arms that have been used to commit the offence of murder and attempt to murder as a part of the larger conspiracy by the Khalistan Liberation Force ('KLF'), a banned organisation under the Unlawful Activities (Prevention) This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 12/11/2024 at 22:33:33 Act. Though initially, there were various offences on which the chargesheet was filed with respect to the present Appellant; vide order dated 21st December, 2022, passed by the Special Court, charges against the Appellant were only framed under Section 120B of IPC read with Section 25 of the Arms

Act. The order on charge dated 21st December, 2022, against the Appellant reads as under:

"28. During the investigation of NIA, evidence was also collected regarding hatching of larger conspiracy for executing target killing by committing different incidences regarding which NIA had registered different RC numbers and investigated as well as filed charge sheet as per details mentioned in Table No.1. In those connected cases accused more or less are same. Trial of those connected matter is also pending in this court. As in the investigation of those cases as well as investigation of this case also evidence regarding involvement of Dharminder Singh @ Guguni (A-3), Anil Kumar @ Kala (A-4), Jagtar Singh Johal @ Jaggi (A-6), Harminder Singh @ Minto (A-5 since expired, Taljeet Singh @ Jimmy (A-13 not arrested), Harmeet Singh @ Happy @ PhD (A-14 not arrested), Gurjinder Singh @ Shastri (A-15 not arrested), Gurusharan Singh Wahiwal (A-16 not arrested), Tarlok Singh @ Laddi (A-19 not arrested) regarding they being part of conspiracy was collected either by participating transfer of funds, purchasing of arms and ammunition etc.

29. However unlike the other connected cases, A-9 Pahad Singh, A-10 Parvez, A-11 Malook Tomar and A-15 Gurjant Singh Dhillon (A-15) have not been charged sheeted.

30. Having heard the submissions of ld. PP for NIA and Sh. Jaspal Singh Manjhpur, ld. counsel for A-1, A-2 and A-6 as well as proxy counsel for A-3 and also also heard Sh. Bankim Kulshreshtha, ld. counsel for A-4 and having considered the evidence regarding alleged taking of training by A-1 and A-2 under the larger conspiracy and also in that process coming to India and thereafter arranging arms and ammunition with the help of other co-accused.

31. I have also taken into consideration evidence as against other accused i.e. A-3, A-4, A-6 as well as absconding accused A-5, A-13, A-14, A-15, A-16 and A-19 being part of conspiracy This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 12/11/2024 at 22:33:33 in commission of offence. This court need not to discuss evidence in elaboration, as same has already been discussed in orders deciding question of charge in connected matters, wherein same evidence has been put forth by the prosecution.

32. Sh. Jaspal Singh Manjhpur submits that since in other seven matters orders for framing charges have already been passed, based on similar evidence of alleged conspiracy, recovery of weapons etc. Therefore without admitting the allegations and admissibility of evidence, he submits that on the same pattern as earlier ordered by the court, charges may be framed on the same provisions as enumerated in para 18.1 of the charge sheet regarding different accused persons. Similar is the submission of

Sh. Bankim Kulshreshtha, ld. counsel for A-

33. Accordingly, taking note of the submissions made at Bar and also considering the facts and evidence collected during the investigation of NIA, I find that charges be framed for offence u/s 120B, 307/34 IPC as well as u/s 16, 17, 18, 20, 21 and 23 of UA(P) Act and also u/s 25/27 Arms Act as against A-1 Hardeep Singh @ Shera. I also find that charges be framed u/s 120B, 307/34 IPC as well as u/s 16, 17, 18, 20, 21 and 23 of UA(P) Act and also u/s 25/27 Arms Act as against A-2 Ramandeep Singh. Charges be framed u/s 120B read with section 25 of Arms Act as against A-3 Dharminder Singh @ Guguni and A-

4 Anil Kumar @ Kala8. Charges be framed u/s 120B IPC as well as u/s 16, 17 and 18 of UA(P) Act as against A-6 Jagtar Singh Johal. Let charge for the said offences be framed."

4. In the above order, the Appellant is Accused No. 3-Dharmender Singh @ Gugny.

5. In the impugned judgment, while rejecting the prayer for bail, the Special Court has recorded as under:

"7. It is a matter of record that no charge has been framed against accused in any offence under UAPA. Therefore, twin tests shall not be applicable while adjudicating the present case.

8. It is matter of record that accused/applicant is facing trial in multiple cases before this court itself. In four such cases, application of bail was filed on behalf of accused. Thus, accused/applicant at least This is a digitally signed order.

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9. Admittedly, charge in the present matter has been framed and accused/applicant is facing charge u/s 120B IPC as well as under

section 25 Arms Act. as per the case of prosecution, there are cases of targeting killing which were carried out as a part of larger conspiracy. That in the present matter specifically, one Sh. Amit Arora was attacked with the intent to take his life. It has been held that there is enough material to show a strong prima facie suspicion against applicant/accused among others of being part of conspiracy and his role be for facilitating the purchase of arms and ammunitions. This order of charge was not

challenged and observation attained finality.

10. It was argued on behalf of accused/applicant that there are no charges under UAPA and co accused have been admitted in bail. It is trite law that an accused cannot claim a ground of parity as a matter of right if co accused is admitted in bail and role of applicant/accused is to be assessed independently. The court is conscious of legal principle that Jail is an exception and bail is rule, however, at the same time, the established principle of law on the issue of bail is that gravity of offence, previous involvement of accused/applicant are also to be considered. The allegations are of being part of a conspiracy which was hatched by members of Khalistan liberation force for committing target killings in Punjab while being fully aware about it.

The said conspiracy aims at causing law and order situation in the State of Punjab as an attempt to give impetus to terrorism in the state of Punjab. The said conspiracy has clear and definite overtone of secessionism which indicate the gravity of offence. To attain their/ nefarious designs, attempt on the life of innocent citizen of this country was made. Therefore, the role of accused/applicant from the co accused who admitted on bail and facing charges u/s Arms Act is different.

In view of above discussion, the application seeking bail filed on behalf of accused/applicant Dharmender @ Gugny is hereby dismissed. Application stands disposed of accordingly. Copy of order be given dasti, as requested."

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6. Ld. Counsel- Mr. Agnihotri, appearing for the Appellant submits that the Appellant's confessional statement recorded under Section 164 of Cr.P.C., as also the bail orders in other cases where the Appellant has been arrayed as an accused have been filed. He submits that a perusal of the same would show that the Appellant has been granted bail in 7 other cases, out of which 6 orders have been placed on record. Ld. Counsel also submits that the relevant order in one of the said cases is yet to be issued to the Appellant and the same was passed sometime last month.

7. It is further his submission that the entire case against him is based on his confessional statement under Section 164 of Cr.P.C. No case has been filed against the Appellant under UAPA. He submits that in view of the bail which has already been granted in 7 other cases on the same facts, in the present case as well, the bail would be liable to be granted.

8. On the other hand, Ms. Shilpa Singh, ld. SPP for the NIA submits that the present case would be distinguishable from the 7 other cases where the Appellant has been granted bail, as in the present case, charge has also been framed under Section 120B of IPC. It is submitted by ld. SPP that the Appellant was well aware of the purpose for which the arms have been supplied by him to the co-accused. Though no charges have been framed under the UAPA, ld. SPP for NIA submits that the

Appellant having supported the conspiracy of the members of Khalistan Liberation Force ("KLF"), would not be entitled to bail. She further submits that the conspiracy under Section 120B IPC had been hatched by the accused persons, which posed a great threat.

9. A perusal of the record would show that in his statement under Section 164 Cr.P.C., the Appellant has actually made a statement which is in the This is a digitally signed order.

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- (i) RC No. 7/2019/NIA/DLI (Vide order dated 26th April, 2023)
- (ii) RC No. 18/2017/NIA/DLI (Vide order dated 26th April, 2024 & 26th May, 2024),
- (iii) RC No. 22/2017/NIA/DLI (Vide order dated 12th May, 2023),
- (iv) RC No. 23/2017/NIA/DLI (Vide order dated 12th May, 2023),
- (v) RC No. 26/2017/NIA/DLI (Vide order dated 12th May, 2023 & 26th May, 2024)
- (vi) RC No. 27/2017/NIA/DLI (Vide order dated 26th April, 2024).

10. In all of the aforementioned orders, it is clearly recorded that there is no charge framed under the UAPA Act against the Appellant, thus, Section 43D(5) of UAPA would not have any applicability to the present case. The primary allegation and charge against the Appellant is under Section 25 of the Arms Act.

11. Ld. SPP for the NIA states that since in the present case, the Appellant has also been tried under Section 120B of IPC, the said bail orders would not be applicable to the present case.

12. The Court has perused the records. In RC No. 7/2019/NIA/DLI, the facts were similar to the present case, where the charges have been framed This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 12/11/2024 at 22:33:33 under Section 120B IPC read with Section 25 of the Arms Act. Neither the aforesaid orders granting bail to the Appellant nor, the order on charge dated 21st December, 2022, have been challenged by

the NIA. The order on charge as extracted above is clear to the effect that the Special Court had found no material to support any other allegations against the Appellant. In the opinion of this Court, the allegations in all these cases are similar and based on the same set of four instances of supply of weapons by the Appellant.

13. Considering the period of incarceration undergone by the Appellant and aforesaid orders granting bail to the Appellant, the Appellant's plea for bail deserves consideration. Further, since the order on charge dated 21st December, 2022, and aforementioned orders granting bail to the Appellant have not been challenged by the NIA, in these circumstances, this Court is of the opinion that the Appellant would be entitled to be enlarged on bail. Accordingly, the Appellant is directed to be released on bail on his furnishing a personal bond of Rs. 50,000/- with one surety of like amount to the satisfaction of the Id. Trial Court/Link Court, and also subject to the following conditions:

i. The Appellant shall not leave the country without prior permission of the Id. Trial Court and shall surrender his passport to the Trial Court.

ii. The Appellant shall intimate the Id. Trial Court by way of an affidavit and to the Investigating Officer regarding any change in his residential address.

iii. The Appellant shall appear before the Id. Trial Court as and when the matter is taken up for hearing.

iv. The Appellant shall provide his mobile number to the Investigating This is a digitally signed order.

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v. The Appellant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

14. The Appeal is allowed in the above terms and disposed of accordingly.

15. Copy of the order be communicated to the concerned Jail Superintendent for necessary information and compliance.

16. Order be uploaded on the website of this Court forthwith.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

NOVEMBER 12, 2024/bsr/ms This is a digitally signed order.

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