

Bhanwar Lal Chngal vs The National Investigation Agency on 20 June, 2024

Author: Rongon Mukhopadhyay

Bench: Rongon Mukhopadhyay, Deepak Roshan

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (DB) No. 272 of 2024
Bhanwar Lal Chngal ... Appellant
Versus
The National Investigation Agency ... Respondent

CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY HON'BLE MR. JUSTICE DEEPAK ROSHAN For the Appellant : Mr. Mahesh Tewari, Advocate For the Resp.- NIA : Mr. Amit Kumar Das, Spl.P.P.

Order No. 09

Dated 20th June, 2024

Rongon Mukhopadhyay, J. : 1. Heard Mr. Mahesh Tewari, learned counsel for the appellant and Mr. Amit Kumar Das, learned Special P.P.

2. This appeal is directed against the order dated 15.02.2024 passed by Sri Madhuresh Kumar Verma, learned Additional Judicial Commissioner-XVI- cum- Special Judge, NIA, Ranchi in Misc. Criminal Application No. 3652 of 2023 arising out of Special Case (NIA) 4/2021 (RC-04/2021/NIA/RNC), whereby and whereunder, the prayer for bail of the appellant has been rejected.

3. The prosecution case in brief is that an information was received that one person, namely, Avinash Kumar @ Chunnu Sharma along with other persons were supplying arms and ammunitions to various terrorist organization and other terrorist gangs. Accordingly a General Diary Entry was made vide GD No. 8/2021 dated 12.11.2021. A team of ATS, Jharkhand headed by Sub Inspector ATS, Ranchi proceeded for Imamganj, Gaya, Bihar on 31.11.2021 whereupon the said accused was apprehended and during preliminary investigation he had admitted that he along with one Rishi Kumar were supplying arms and ammunitions to the Armed Cadre of CPI (Maoist) and other terrorist gangs.

On the basis of the aforesaid allegations ATS P.S. Case No. 1/2021 was instituted u/s 120B I.P.C., Section 17 CLA Act, Sections 13, 19, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967 and Sections 25(1-b)A/26/35 Arms Act against 12 named accused persons and other unknown persons.

4. Since the allegations involved a Scheduled Offence, the Central Government in exercise of the power conferred under sub section (5) of Section 6 read with Section 8 of the National Investigation Agency Act, 2008

1|Page vide order F. No. 11011/73/2021/NIA dated 03.12.2021 directed the NIA to take up the investigation of the case and consequently ATS P.S. Case No. 1/2021 was reregistered as NIA Case No. RC-04/2021/NIA/RNC.

5. On completion of investigation charge sheet was submitted by the NIA being Charge Sheet No. 1/2022 dated 11.05.2022 against the appellant and the other accused persons.

6. It has been submitted by Mr. Mahesh Tewari, learned counsel appearing for the appellant that in the First Information Report which was instituted by the ATS, the appellant was not named, but subsequently in the charge sheet submitted by the NIA, the appellant has been made an accused and the sole basis for implication of the appellant seems to be the confessional statement of Kartik Behra. It has been submitted that the allegation against the appellant is of conspiracy with the other accused persons in supply of arms and ammunitions to a terrorist gang, but the NIA has failed to indicate meeting of minds which would constitute conspiracy. It has further been submitted that the appellant is in custody 12.07.2023 and some of the co- accused persons have been granted bail by this Court.

7. Mr. Amit Kumar Das, learned Spl. P.P. (NIA) has submitted that the appellant being a Head Constable of B.S.F. (Boarder Security Force) had been supplying arms and ammunitions to the terrorist gang through Kartik Behra and he has referred to Para 17.5.1 wherein on conducting a check of arms and ammunitions short falls were found and Para 17.5.3 wherein from the statements of the witnesses, the modus operandi of the appellant would transpire as to how the short falls in arms and ammunitions were made up and then returned to the concerned companies. Mr. Das has also referred to the role and offences established against the accused Arun Kumar Singh @ Fauji who was involved in illegal supply of arms and ammunitions to the terrorist gang and his prayer for bail has been rejected by this Court in Criminal Appeal (DB) No. 1280 of 2022. It has been submitted that the act of the appellant clearly makes out a prima facie case against the appellant and therefore Section 43(D)(5) of the Unlawful Activities (Prevention) Act would come into play and thus the present appeal is liable to be rejected.

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8. Mr. Mahesh Tewari, learned counsel appearing for the appellant in response has submitted that the appellant has worked in BSF for more than 33 years and is at the fag end of his career. It has been submitted that there has been no report earlier with respect to the involvement of the appellant in criminal activities and only on the basis of the confessional statement of Kartik Behra, the appellant has been implicated. It has further been submitted that though a huge quantity of unaccounted ammunitions, etc. were found in a room which was locked and the key was with the appellant as per the allegations, but there is no seizure list with respect to the lock and the key and in fact only to frame the appellant such aspersions have been cast by the NIA against the appellant.

9. We have heard the learned counsel for the respective sides and have also perused the affidavits filed on their behalf.

10. The appellant has been arrayed as A-13 in the charge sheet while Kartik Behra has been arrayed as A-9. The role of the appellant has been demarcated in Para 17.6 of the second charge sheet which reads as follows:-

17.6: Role and offences established against accused Bhanwar Lal Chhangal (A-13)
17.6.1 Bhanwar Lal Chhangal, despite being an employee of 116 BN, BSF, posted at Firozpur, Punjab (A-13) was involved in pilferage and supply of ammunitions to Charge-sheeted accused Kartik Behera (A-9) which was further supplied to cadres of CPI (Maoist) and various terrorist gangs with an intention to threaten the security of the country.

17.6.2 Bhanwar Lal Chhangal (A-13) was Magazine/ Kote in charge of 116 BN BSF, Firozpur, Punjab. In the year 2016, Bhanwar, Lal Chhangal (A-13) provided 900 rounds of 9mm to charge-sheeted accused Kartik Behra (A-9). In the July 2021, he also provided 500 rounds of 9mm to accused Kartik Behra (A-9). On different occasions A-13 provided ammunitions to accused Kartik Behra (A9). For illegal sale of ammunitions, A-9 paid Rs. 1,65,000/ to A-13 in Cash.

17.6.3: Investigation revealed that the accused Bhanwar Lal Chhangal (A-13) is closely associated with charge-sheeted accused Kartik Behra (A-9). During the tenure as Kote NCC, A-13 along with A-9 conspired in pilferage of ammunitions from the Magazine of 116 BN BSF with an intention to threaten the security of the country. Further, the said pilfered ammunitions were supplied to CPI (Maoist), a proscribed terrorist organization and other terrorist gangs, with the help of charge-sheeted accused persons Kartik Behra (A-9) and Arun Kumar Singh (A-5). A-13 was engaged in unlawful activities

3|Page in pilferage and further supply of huge quantity of ammunitions to the armed cadres of CPI (Maoist) with the help of CS accused persons A-9 and A-5. A-13 has co-conspired with the CS accused A-5 & A-9 and supported the CPI (Maoist), a proscribed terrorist organization by supplying huge quantity of ammunitions.

17.6.4: Therefore, as per averments made in pre-para, it is established that Bhanwar Lal Chhangal (A-13), despite being member of a Central Armed Police Force, was involved in unlawful activity of supplying ammunition to CPI (Maoist), which were further intended to be used to disrupt the sovereignty, integrity and security of India. He was a part of conspiracy to knowingly facilitate the supply of ammunition, which is a preparatory act for threatening the Sovereignty, Integrity and Security of India. He was in illegal possession of ammunitions pilferaged from government store. Thereby, Bhanwar Lal Chhangal (A-13) committed offences under Section 120-B IPC (Substantively), Section 120-B IPC r/w 25(1-AA) & 26 of the Arms Act, 1959 and

Section 13, 18 & 39 of UA(P)Act, 1967.

11. It would thus appear that the pilferage of ammunitions was made by the appellant on different occasions for sale with the help of the charge sheeted accused Kartik Behra (A-9) and Arun Kumar Singh (A-5).

12. Mr. Mahesh Tewari in course of his submission has referred to the case of Praveen @ Sonu v. The State of Haryana in Criminal Appeal No. 1571 of 2021 wherein it has been held as follows:-

12. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused. In the case of Indra Dalal v. State Of Haryana, this Court has considered the conviction based only on confessional statement and recovery of vehicle used in the crime. In the said case, while setting aside the conviction, this Court has held in paragraphs 16 & 17 as under:

"16. The philosophy behind the aforesaid provision is acceptance of a harsh reality that confessions are extorted by the police officers by practising oppression and torture or even inducement and, therefore, they are unworthy of any credence. The provision absolutely excludes from evidence against the accused a confession made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such. If he is a

4|Page police officer and confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countless by this Court as well as the High Courts.

17. The word "confession" has nowhere been defined. However, the courts have resorted to the dictionary meaning and explained that incriminating statements by the accused to the police suggesting the inference of the commission of the crime would amount to confession and, therefore, inadmissible under this provision. It is also defined to mean a direct acknowledgment of guilt and not the admission of any incriminating fact, however grave or conclusive. Section 26 of the Evidence Act makes all those confessions inadmissible when they are made by any person, whilst he is in the custody of a police officer, unless such a confession is made in the

immediate presence of a Magistrate. Therefore, when a person is in police custody, the confession made by him even to a third person, that is, other than a police officer, shall also become inadmissible.

13. The said judgment has been relied upon by Mr. Tewari, learned counsel for the appellant to show that there was no meeting of mind between the conspirators and there is no other evidence to corroborate the allegation of conspiracy made against the appellant.

14. The role and offences established against the appellant in the charge sheet seems to be on the basis of certain incriminating findings against the appellant which has been recorded at Para 17.5 of the charge sheet. From a perusal of Para 17.5.1 it transpires that the Commandant of 116 BN BSF was requested to look into the pilfered ammunitions in the 116 BN, Headquarters by the ATS team and on a check of the arms and ammunitions deficiency of 9 MM Ball and 5.56 MM CTN surfaced and in an abandoned room situated behind the Battalion Magazine of 116 BN BSF huge quantity of unaccounted ammunitions, empty fire cases and other control items were found and though the room was locked, but the same was opened with the key which was in the possession of the appellant. In fact the details of recovery from the said premises seem to assume dangerous proportions and it cannot be said that any proper explanation has been submitted by the appellant with respect to the said ammunitions. The involvement of the appellant further strengthens from the statement of several witnesses recorded u/s 161 Cr.P.C. and 164 Cr.P.C. as would appear from Para-17.5.3 of the Charge Sheet. The appellant seems to have undertaken a ploy of removing the deficiency in the

5|Page ammunitions by contacting the Kote NCOs of 'C', 'D' and 'F' Company and ask them to provide 1120 rounds i.e. 1 carton from each company without informing the superiors and after the same was supplied on the next date the ammunitions were returned to the company from where it had been supplied. This would therefore mean that the appellant having taken undue advantage of his position as a Head Constable in the BSF had adopted an almost foolproof plan to continue supply ammunitions to the terrorist gang through Kartik Behra without arousing any suspicion till his plan was busted by the NIA during investigation of the case.

15. Mr. Tewari has referred to the fact that some of the co-accused persons have been granted bail by this Court in Criminal Appeal (DB) No. 611 of 2022 and (DB) No. 752 of 2022, but as has rightly been pointed out by the learned Special P.P. (NIA) during investigation no offence could surface against the said appellants under the provisions of the Unlawful Activities (Prevention) Act, 1967 which resulted in their grant of bail.

16. However, in the present case the entire scenario would depict that a prima case is made out against the appellant in terms of Section 43 D(5) of the Unlawful Activities (Prevention) Act, 1967 and his act in clandestine supply of ammunition to the terrorist gang had endangered the internal security of the Country and the life of its citizens and in such circumstances, therefore, we do not find any reason to interfere in the order dated 15.02.2024 passed by Sri Madhuresh Kumar Verma, learned Additional Judicial Commissioner- XVI-cum- Special Judge, NIA, Ranchi in Misc. Criminal Application No. 3652 of 2023 arising out of Special Case (NIA) 4/2021 (RC-04/2021/NIA/RNC)

and consequently we dismiss the appeal.

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(RONGON MUKHOPADHYAY,J.) (DEEPAK ROSHAN, J.)

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