

Bhikhan Ganjhu @ Deepak Kumar vs Union Of India on 14 August, 2024

Author: Rongon Mukhopadhyay

Bench: Rongon Mukhopadhyay, Deepak Roshan

Criminal Appeal (DB) No. 554 of 2024

[Against the order dated 22.03.2024 passed in Misc. Criminal Application No. 3601 of 2023, corresponding to RC 06/2018/NIA/DLI), arising out of Special (NIA) Case No. 03/2018, by the learned AJC-XVI-cum-Special Judge, NIA, Ranchi]

Bhikhan Ganjhu @ Deepak Kumar, S/o Bandhu Ganjhu, R/o Village- Vijan, P.O. & P.S.- Piparwar, District-Chatra.

.... Appellant

Versus

Union of India, through National Investigating Agency, represented by Superintendent of Police, N.I.A., having its office at N.I.A. Camp Office, Quarter No. 305, Sector-II, P.O. Dhurwa, P.S. Dhurwa, District Ranchi, Jharkhand-834002.

.... Respondent

For the Appellant : Mr. Balaji Srinivasan, Advocate
For the N.I.A. : Mr. A.K. Das, Spl. P.P.

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN

C.A.V. on 04/07/2024
Per Rongon Mukhopadhyay, J.

Pronounced on 14/08/2024

Heard Mr. Balaji Srinivasan, learned counsel for the appellant and Mr. A.K. Das, learned Spl. P.P. for the National Investigating Agency.

2. This appeal is directed against the order dated 22.03.2024 passed in Misc. Criminal Application No. 3601 of 2023, corresponding to RC 06/2018/NIA/DLI), arising out of Special (NIA) Case No. 03/2018, by the learned AJC-XVI-cum-Special Judge, NIA, Ranchi, whereby and whereunder, the prayer for bail of the appellant has been rejected.

3. A written report was submitted by Ramdhari Singh, Sub Inspector of Police, posted at Simaria P.S. to the effect that on 10.01.2016, a secret information was received by the Superintendent of Police that in Amrapali Magadh Coal area in Tandwa some local people have formed an association which is related to the banned extremist outfit TPC. The members of such association were extracting levy from coal traders and DO holders by creating fear in the name of the extremists of TPC, namely Gopal Singh Bhokta @ Brijesh Ganjhu, Mukesh Ganjhu, Kohram Ji, Akraman Ji @ Ravindra Ganjhu, Anischay Ganjhu, Bhikan Ganjhu, Deepu Singh @ Bhikan and Bindu Ghanju. It

was also alleged that if any businessmen hesitates to pay levy, they are threatened by members of such organization and are also subjected to hardships. In order to verify the truthfulness or otherwise of such information a raiding party was constituted on the orders of Superintendent of Police, Chatra. A raid was conducted in the house of the President of the association Binod Kumar Ganjhu and from under his bed as well as from an almirah Rs. 91,75,890/- was recovered. No satisfactory explanation could be submitted by Binod Kumar Ganjhu with respect to the recovery of such a huge amount of cash. From the house of Binod Kumar Ganjhu two persons were also apprehended who disclosed their names as Birbal Ganjhu and Munesh Ganjhu and on search of their persons a loaded Mauser pistol was recovered from the possession of Birbal Ganjhu while from the possession of Munesh Ganjhu a country made pistol and two live cartridges were recovered. Both had confessed of being associated with TPC organization. Binod Ganjhu had disclosed that he is the President of "Magadh Sanchalan Samittee" and the levy collected is sent to Gopal Singh Bhogta @ Brijesh Ganjhu and thereafter it is distributed between Mukesh Ganjhu, Kohramji, Akramanji @ Ravindra Ganjhu, Anischyaji, Bhikan Ganjhu and Deepu Singh @ Bhikan. He had further disclosed that Bindu Ganjhu is a member of "Amrapali Sanchalan Samittee" who collects levy on behalf of TPC and since he is at present in jail the collection of levy is being done by Pradeep Ram. On such information a raid was conducted in the house of Pradeep Ram and from under his bed as well as from an almirah Rs. 57,57,710/- in cash was recovered. No satisfactory explanation could be given by Pradeep Ram with respect to the cash recovered.

4. Based on the aforesaid allegations Tandwa P.S. Case No. 02 of 2016 was instituted for the offences under Sections 414, 384, 386, 387, 120B of the I.P.C., Section 25(1-B)(a), 26 and 35 of the Arms Act and Section 17 (1)(2) of Criminal Law Amendment Act against Binod Kumar Ganjhu, Munesh Ganjhu, Pradeep Ram, Birbal Ganjhu, Gopal Singh Bhokta @ Brijesh Ganjhu, Mukesh Ganjhu, Kohramji, Akramanji @ Ravindra Ganjhu, Anischya Ganjhu, Deepu Singh @ Bhikan, Bindu Ganjhu @ Bindeshwar Ganjhu and Bhikhan Ganjhu.

On 10.03.2016 charge sheet was submitted against the other accused persons before the learned Chief Judicial Magistrate, Chatra. On 09.04.2017 on the prayer made by the Investigating Officer offences under Sections 16, 17, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 (herein after referred to as the UAP Act for the sake of brevity) were added. Since the offences involved a scheduled offence, in exercise of powers conferred u/s 6(3) read with Section 8 of the National Investigation Agency, Act 2008, the Central Government vide order dated 13.02.2018 had directed the National Investigation Agency to take up the investigation of the case consequent to which Tandwa P.S. Case No. 02 of 2016 was re-registered as NIA Case No. RC- 06/2018/NIA/DLI.

The first supplementary charge sheet bearing Charge Sheet No. 32/2018 was filed by the NIA on 21.12.2018.

5. It has been submitted by Mr. Balaji Srinivasan, learned counsel appearing for the appellant that the appellant is in custody since 25.03.2022 and making a mention in the Supplementary Charge-Sheet that the appellant is absconding is a misnomer. The allegations against the appellant are generic to the effect that he is a member of a terrorist gang. The appellant is said to be the Zonal Commander of TPC, a terrorist gang but at para 17.5 of the Supplementary Charge-Sheet collection

of levy for Coal Traders/Transporters and contractors for different amounts have been assigned to Area Commander, Sub-Zonal Commander and Regional Commander. The absence of the Zonal Commander in the mechanism of collection of levy seems to have obliterated any active role played by the appellant to that effect. It has been submitted that the name of the appellant as Zonal Commander figures at Serial No. 2 and in the hierarchy his controlling authority is Mukesh @ Mukesh Ji @ Mungeshwar Ganjhu being the Regional Commander. Mr. Srinivasan, learned counsel for the appellant has further submitted that even in the confessional statement of A-6 and the 164 Cr.P.C. statement of the protected witnesses the generality of allegations levelled against the appellant is stark on the face of it. Drawing the attention of the Court to para 17.24 of the Supplementary Charge-Sheet, Mr. Srinivasan has submitted that the allegations against the appellant are all based on surmises and conjectures. So far as the antecedents of appellant are concerned, it has been submitted that in most of the cases the appellant has either been acquitted or have been granted bail. Mr. Srinivasan has further submitted that several of the co-accused have been granted bail by this Court in Cr. Appeal (DB) No. 999 of 2019, Cr. Appeal (DB) No. 394 of 2021, Cr. Appeal (DB) No. 159 of 2023 and Cr. Appeal (DB) No. 1019 of 2018. No prima facie case, therefore, according to the learned counsel for the appellant is made out and consequently the embargo for grant of bail in terms of Section 43D(5) of the UAP Act will not operate.

6. Opposing such submission, Mr. A.K. Das, learned Spl. P.P. for the N.I.A. has brought to the notice of the Court that A-12 is the Regional Commander of TPC whose prayer for bail has already been rejected. It has been submitted that the appellant has got nine criminal antecedents which includes murder, criminal intimidation, extortion etc. in different Police Stations of Chatra which would indicate that the appellant is a dreaded criminal of the area. The evidence of the protected witnesses clearly reveals that the appellant being the Zonal Commander was an active member of the TPC. It has been submitted that the co-accused who have been granted bail was on the ground of incarceration in custody which distinguishes the case of the appellant who was an absconder. It has been submitted that the bail of some of the co-accused have been rejected by this Court. It has further been submitted that the trial is on the verge of closure as only one witness is left to be examined. Mr. Das has referred to the case of "Gurwinder Singh versus State of Punjab and Another" reported in 2024 SCC OnLine SC 109, in support of his contention.

7. We have heard the learned counsel for the respective sides and have also perused the various affidavits brought on the record.

8. In the case of "Gurwinder Singh versus State of Punjab and Another"(supra) the power and scope of Section 43D(5) of the UAP Act has been discussed in the following manner:

"28. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a "rule", if after hearing the Public Prosecutor and after perusing the final report or case diary, the court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied -- that the courts would proceed to decide the bail application in accordance with the "tripod test" (flight risk, influencing witnesses, tampering with evidence). This position is made clear by sub-section (6) of Section

43-D, which lays down that the restrictions, on granting of bail specified in sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.

29. On a textual reading of Section 43-D(5) of the UAP Act, the inquiry that a bail court must undertake while deciding bail applications under the UAP Act can be summarised in the form of a twin-prong test:

(1) Whether the test for rejection of the bail is satisfied?

1.1. Examine if, prima facie, the alleged "accusations" make out an offence under Chapter IV or VI of the UAP Act;

1.2. Such examination should be limited to case diary and final report submitted under Section 173CrPC;

(2) Whether the accused deserves to be enlarged on bail in light of the general principles relating to grant of bail under Section 439CrPC ("tripod test")?

On a consideration of various factors such as nature of offence, length of punishment (if convicted), age, character, status of accused, etc. the court must ask itself:

2.1. Whether the accused is a flight risk?

2.2. Whether there is apprehension of the accused tampering with the evidence?

2.3. Whether there is apprehension of accused influencing witnesses?"

9. The delay in trial and the period of incarceration in the backdrop of the case of "Union of India versus K.A. Najeeb"

reported in (2021) 3 SCC 713, has been considered and, it has been held as follows:

"46. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organisation involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on behalf of the appellant cannot be accepted."

10. Equipped with the aforesaid directives, let us examine the case of the appellant. The role and activities of the appellant who has been arrayed as A-13 in the Supplementary Charge-Sheet has been summed up in the following manner:

"17.24 Role and activities of / offences established against Bhikhan Ganjhu @ Deepak (A-

13) : Therefore, as per the averments made hereinabove / in the pre-paragraphs, it is established that he is zonal commander of TPC and works under A-

14. He, being member of terrorist gang, was closely associated with top leaders of the gang and used to extort levy from coal transporters / contractors and raised funds for the terrorist gang. Therefore, it is established that Bhikhan Ganjhu @ Deepak (A-13), by becoming member of terrorist gang / unlawful association TPC, proscribed by Government of Jharkhand, assisted in the operations / management of TPC in criminal conspiracy with members of the terrorist gang including A-14 and A-15 with intent to aid the above said terrorist gang collected funds from illegitimate sources through extortion from the contactors / coal traders / coal Transporters by putting them in fear of death / grievous hurt and thereby conspired amongst themselves for terrorist act. Thereby accused Bhikhan Ganjhu @ Deepak (A-13) committed offences under sections 120B r/w 384, 386 and 387 of the IPC, sections 16, 17, 18 and 20 of the UA(P) Act and section 17 of the CLA Act, 1908."

11. The allegations itself are vague and generalized. The involvement of the appellant in terrorist activities has to be founded upon specific evidence. Merely, alleging that the appellant is a member of a terrorist gang closely associated with the top brass of such gang and his involvement in various nefarious activities without specifying instances would not cement such allegations into a concrete form. Antecedents are there against the appellant and as per Mr. Srinivasan, in most of the cases the appellant has either been acquitted or he is on bail which has not much been refuted by the learned Spl. P.P. for the N.I.A. and, the mere presence of antecedents would not lead to a presumption about the active involvement of the appellant in the instant case without there being any material in support thereof. The Supplementary Charge-Sheet of National Investigating Agency is a document steeped in ambiguity as the hierarchical structures in collection of levy from the contractors have been enumerated in para 17.5 of the Supplementary Charge-Sheet which does not include a Zonal Commander which the appellant is as per the Investigating Agency but at the same time saddling the appellant of extorting levy from Coal Transporters / Contractors albeit in a generalized sense would not enhance the role of the appellant. The submission of Mr. Das, learned Spl. P.P. for the N.I.A. that the case of the appellant is similar to that of Munesh Ganjhu and Prem Vikash whose prayer for bail has been rejected by this Court is negated simply on account of the fact that graver charges were leveled against them and they were actively involved in pursuing terrorist activities in various capacities in the terrorist gang and which has been highlighted in their respective orders.

12. We are aware about the settled law that in deducing whether a prima facie case is made out or not the Court cannot conduct a mini trial. Our conclusion is primarily and solely based on the

materials which have been mentioned in the Supplementary Charge-Sheet and which is to the effect that no prima facie case is made out against the appellant to deny him bail in terms of Section 43D(5) of the UAP Act.

13. We accordingly, set aside the impugned order dated 22.03.2024 passed in Misc. Criminal Application No. 3601 of 2023, corresponding to RC 06/2018/NIA/DLI), arising out of Special (NIA) Case No. 03/2018, by the learned AJC-XVI-cum-Special Judge, NIA, Ranchi, by which, the prayer for bail of the appellant was rejected.

14. The appellant shall be released on bail on usual conditions to be decided by the learned trial court.

15. We make it clear that the learned trial court shall not be influenced while conducting the trial of any of the observations made by us in this order as such observations / findings are restricted only for the purpose of consideration of bail to the appellant.

16. This appeal is allowed.

(Rongon Mukhopadhyay, J.) (Deepak Roshan, J.) High Court of Jharkhand at Ranchi Dated, the 14th day of August, 2024.

A. Sanga/NAFR