

Bindeshwar Ganjhu @ Bindu Ganjhu vs The Union Of India Through Nia on 4 August, 2022

Author: Rongon Mukhopadhyay

Bench: Rongon Mukhopadhyay, Ambuj Nath

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No. 29 of 2021

Bindeshwar Ganjhu @ Bindu Ganjhu Appellant Versus The Union of India through NIA
Respondent

CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY : HON'BLE MR. JUSTICE
AMBUJ NATH

For the Appellant : Mr. Pankaj Kumar, Advocate For the Respondent-NIA : Mr. Amit Kumar Das,
Special P. P.

04.08.2022 Heard Mr. Pankaj Kumar, learned counsel for the appellant and Mr. Amit Kumar Das,
learned Special P. P. for the NIA.

2. This appeal has been directed against the order dated 18.01.2021 passed in Misc. Criminal Application No. 846 of 2020 corresponding to Special (NIA) Case No. 3 of 2018 (R.C.-06/2018/NIA/DLI) registered under Sections 414, 384, 386, 387, 120 B of Indian Penal Code, also Section 25(1-B)a, 26, 35 of the Arms Act, also Section 17 (1)(2) of the Criminal Law (Amendment) Act and Section 17, 18, 20 & 21 of U.A.(P) Act arising out of Tandwa P. S. Case No. 2 of 2016 passed by Sri A. K. Mishra No. 1, Additional Judicial Commissioner 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), 26/35 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 Bhikan 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 (hereinafter 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 reregistered 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. Pankaj Kumar, learned counsel for the appellant that in the initial case registered being Tandwa P. S. Case No. 2 of 2016, the appellant was granted bail by the learned Sessions Judge, Chatra. It has been submitted that there is nothing on record to suggest that the appellant was a member of the terrorist organization and that the properties acquired by the

appellant are from the levy collected on behalf of the terrorist organization. Mr. Kumar, has further submitted that the appellant is a Contractor who runs his Company - Maa Gange Coal Trading and in fact the appellant is also a victim, as the act alleged against the appellant was only for the purposes of smooth running of his business. It has also been submitted that the appellant is in custody since 18.08.2018 and there is no chance of the trial being concluded in the near future. Mr. Pankaj Kumar has further submitted that several co-accused persons have been granted bail by this court as well as by the Hon'ble Supreme Court on the consideration that they were the victims of extortion racket and the money which was coughed up by them were in order to ensure the smooth running of business and consequently no prima-facie case is made out in terms of Section 43 (D) (5) of the UA(P) Act. The appellant has therefore claimed parity with respect to the said accused persons who have been granted bail.

6. Mr. Amit Kumar Das, learned Special P. P. for the NIA has referred to the allegations levelled against the appellant as depicted in the first supplementary charge-sheet. He was a member of the 'Shanti Sah Sanchalan Samiti' and was actually involved in collection of levy from the transporters and D. O. holders. He has submitted that the case of the co-accused persons who have been granted bail cannot be equated with the case of the present appellant. Mr. Das has added that if the appellant is granted bail, he may tamper with the evidence. He also submits that the trial is going on.

The first supplementary charge-sheet filed by the NIA includes the name of the appellant who has been arrayed as A-5. The charge-sheet reveals that the appellant is a member of 'Shanti Sah Sanchalan Samiti' of Honhe village in Amrapali Coal Mines Area. He along with A-11 (Mantu Singh @ Prem Vikash) on the direction of A-14 (Akramanji @ Netaji @ Ravindra Ganju @ Ram Vinayak Bhokta) used to collect levy from the transporters and D.O. holders in Amrapali Coal Mines Area. He also colluded with A-7 (Subham Mian) to resolve issues related to levy. It is further depicted that he had acquired the proceeds of terrorism i.e. movable properties through the proceeds of terrorism. He being a member of the terrorist gang was closely associated with the top leaders of the gang and used to extort levy from the transporters/contractors.

7. The allegation against Sudesh Kedia (A-19) was of attending meetings with TPC leaders and paying levy to TPC, CCL and Village Committee for smooth running of business in Amrapali and Magadh Colliery. In the case of "Sanjay Jain" (A-9), he has been attributed to have made payments through RTGS mode to coal transporters against work order and received back cash at the rate of Rs. 200/- per metric tonne from the transporters for the purposes of making payment to TPC operatives - A-5 (appellant), A-11 and A-14 for smooth functioning of the business. The common thread which runs through the case of "Sudesh Kedia" and "Sanjay Jain" is that the appellants had met the TPC operatives in order to ensure smooth functioning of the business.

8. In the case of "Sudesh Kedia Vs. Union of India" reported in (2021) 4 SCC 704, it has been held as follows:

"13. While considering the grant of bail under 7 Cr. Appeal (DB) No.535 of 2020 Section 43-D(5), it is the bounden duty of the Court to apply its mind to examine the

entire material on record for the purpose of satisfying itself, whether a prima facie case is made out against the accused or not. We have gone through the material on record and are satisfied that the appellant is entitled for bail and that the Special Court and the High Court erred in not granting bail to the appellant for the following reasons:

13.1. A close scrutiny of the material placed before the Court would clearly show that the main accusation against the appellant is that he paid levy/extortion amount to the terrorist organisation. Payment of extortion money does not amount to terror funding. It is clear from the supplementary charge-sheet and the other material on record that other accused who are members of the terrorist organisation have been systematically collecting extortion amounts from businessmen in Amrapali and Magadh areas. The appellant is carrying on transport business in the area of operation of the organisation. It is alleged in the second supplementary charge-sheet that the appellant paid money to the members of the TPC for smooth running of his business. Prima facie, it cannot be said that the appellant conspired with the other members of the TPC and raised funds to promote the organisation.

13.2 Another factor taken into account by the Special Court and the High Court relates to the allegation of the appellant meeting the members of the terror organisation. It has been held by the High Court that the appellant has been in constant touch with the other accused. The appellant has revealed in his statement recorded under Section 164 CrPC that he was summoned to meet A-14 and the other members of the organisation in connection with the payments made by him. Prima facie, we are not satisfied that a case of conspiracy has been made out at this stage only on the ground that the appellant met the members of the organisation.

13.3. An amount of Rs 9,95,000 (Rupees nine lakh and ninety five thousand only) was seized from the house of the appellant which was accounted for by the appellant who stated that the amount was withdrawn from the bank to pay salaries to his employees and other expenses. We do not agree with the prosecution that the amount is terror fund. At this stage, it cannot be said that the amount seized from the appellant is proceeds from terrorist activity. There is no allegation that the appellant was receiving any money. On the other hand, the appellant is accused of providing money to the members of TPC.

14. After a detailed examination of the contentions of the parties and scrutiny of the material on record, we are not satisfied that a prima facie case has been made out against the appellant relating to the offences alleged against him. We make it clear that these findings are restricted only for the purpose of grant of bail to the appellant and the trial court shall not be influenced by these observations during trial."

9. In the case of "Sanjay Jain Vs. Union of India" in Criminal Appeal (D.B.) No. 222 of 2019, it has been held as follows:

"44. We are of the opinion that it is not possible to hold that the appellant by his acts, such as, meeting Akraman Jee and Making payment to Akraman Jee became a member of TPC"

10. What would fall from the judgment rendered in the case of "Sudesh Kedia" (supra) is that prima-facie it cannot be said that the appellant (Sudesh Kedia) had conspired with the other members of the TPC and raised funds to promote the terrorist organization.

11. The case of the present appellant is poles apart from the case of "Sudesh Kedia" (supra) and "Sanjay Jain" (supra). If they were the victims, the appellant was one of the aggressors being a member of TPC and engaged in collection of levy for the terrorist organization. This fact is further highlighted in the first supplementary charge-sheet wherein the modus-operandi depicted by the TPC has been discussed and which reads as follows:

"Therefore, from above it surfaces that the modus operandi of the TPC is that they initially blocked the mining process in the Amrapali and Magadh area and threatened the locals and CCL officials and contractors. Then as part of a well planned conspiracy, they formed the Village Committees with their own men in the forefront in Amrapali and Magadh Coal projects of Jharkhand to start the mining process. Subsequently, they imposed a levy amount on coal transportation in the name of loading charges. Some amount does go towards loading charges but a major share of it goes to the TPC and their stooges in the village committee. The coal purchasing companies and others purchase coal through auction from the CCL and then engage transport companies for transportation of coal. It is at this level that the levy is imposed of which the major share goes to the TPC. The levy amount is drawn in cash by these transport company owners and supplied to the TPC which carries its activities in that area. Occasionally, the TPC leaders like A-14 and A-15 used to call for secret meetings of the transporters and coal purchasing companies and instruct them to provide funds timely and in an organized manner."

12. In the counter affidavit, it has been stated that the appellant out of levy amount collected had acquired huge assets, the details of which are as follows:

SN Vehicle Class/Vehicle Nos.

Estimated
value (Rs.)

1. One Loader, Vehicle make JCB India Ltd., registered 21,00,000/-

in the name of Bindeswar Ganjhu, Vehicle Class -

Good Carrier (T), Registration No. JH13 C-0115

2. One Tata Motor Truck, Vehicle Class - Goods Carrier 14,00,000/-

(T), Model No. Tata Registration No. JH13E-0893

3. One Tata Motor Truck, Vehicle Class - Goods Carrier, 14,00,000/-

Model No. Tata Registration No. JH13E-5185

4. One Tata Motor Truck, Vehicle Class - Goods Carrier 14,00,000/-

(T), Model No. Tata Registration No. JH13E-4661

5. One Tata Motor Truck, Vehicle Class - Goods Carrier 14,00,000/-

(T), Model No. Tata Registration No. JH13E-3348

6. One Tata Motor Truck, Vehicle Class - Goods Carrier 14,00,000/-

(T), Model No. Tata Registration No. JH13E-8536

7. One Tata Motor Truck, Vehicle Class - Goods Carrier 14,00,000/-

(T), Model No. Tata Registration No. JH13E-6343

8. One Tata Motor Truck, Vehicle Class - Goods Carrier 14,00,000/-

(T),	Model	No.	Tata	LPK3118CR8X4BS-IV	
	Registration	No.	JH13E-4875		
9.	One Tata Motor Truck,	Vehicle Class	- Goods Carrier		14,00,000/-

(T), Model No. Tata Registration No. JH13E-6844

10. One Tata Motor Truck, Vehicle Class - Goods Carrier 14,00,000/-

(T), Model No. Tata Registration No. JH13D-7917

11. One Tata Motor Truck, Vehicle Class - Goods Carrier 14,00,000/-

(T), Model No. Tata Registration No. JH13D-8759

12. Tata (Eicher) Goods Carrier (T), Model No. Eicher 5,00,000/-

35KCWC having Registration No. JH13B-6095

13. Tata Motor Truck Goods Carrier (T) Model No. - 5,00,000/-

LPK3118CR8X4BS-IV Registration No. JHC13B-6795

14. Tata Motor Truck Goods Carrier (T), Model No. Tata 5,00,000/-

LPK3118CR8X4BS-IV, Registration No. JH13E-3873

13. The appellant also seems to be involved in criminal activities as his antecedents would suggest that he is an accused in several cases, a mention of which has been made in the counter affidavit of the NIA.

14. Section 43 (D) (5) of the UA(P) Act reads as follows:

"(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. In "NIA Vs. Zahoor Ahmad Shah Watali" reported in (2019) 5 SCC 1, it was held 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.

25. From the analysis of the impugned judgment [Zahoor Ahmad Shah Watali v. NIA, 2018 SCC OnLine Del 11185] , it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded under Section 164 CrPC, on the specious ground that the same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is prima facie true or otherwise. That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report under Section 173 CrPC) and other material

gathered by the investigating agency during investigation."

16. The appellant who is an active member of the terrorist organization was involved in collection of levy from the transporters and D.O. holders and was working on the instruction of Akramanji (A-14) in collecting levy on behalf of 'Shanti Sah Sanchalan Samiti' and TPC which apparently makes out a prima-facie case against the appellant thereby attracting the embargo as envisaged in Section 43 (D) (5) of the UA(P) Act for grant of bail and on consideration of the aforesaid facts, we are not inclined to interfere with the order dated 18.01.2021 passed in Misc. Criminal Application No. 846 of 2020 corresponding to Special (NIA) Case No. 3 of 2018 (R.C.-06/2018/NIA/DLI) by Sri A. K. Mishra No. 1, Additional Judicial Commissioner XVI cum Special Judge, NIA, Ranchi and consequently this appeal stands dismissed.

17. Pending I.As, if any also stands disposed of.

(Rongon Mukhopadhyay, J.) (Ambuj Nath, J.) R. Shekhar Cp 3