Santosh Oraon Vs Union Of India Through The National Investigation Agency

Court: Jharkhand High Court

Date of Decision: Dec. 5, 2023

Acts Referred: Constitution Of India, 1950 â€" Article 21
Unlawful Activities (Prevention) Act, 1967 â€" Section 15, 17, 43D(5)
Indian Penal Code, 1860 â€" Section 120B, 420
Narcotic Drugs And Psychotropic Substances Act, 1985 â€" Section 37

Hon'ble Judges: Shree Chandrashekhar, J; Anubha Rawat Choudhary, J

Bench: Division Bench

Advocate: A. K. Rashidi, Amit Kumar Das, Saurav Kumar

Final Decision: Allowed

Judgement

Ã, Shree Chandrashekhar, J

1. As directed by Hon'ble the Chief Justice, High Court of Jharkhand, this matter has been placed before this Bench for hearing.

2. This is second attempt by Santosh Oraon to seek bail in RC-01/2018/NIA/DLI.

3. The first attempt by the appellant to seek bail in the aforementioned case was declined on 28th September 2021 by a co-ordinate Bench of this

Court.

4. In Criminal Appeal (DB) No. 540 of 2020, this Court made the following observations while declining bail to the appellant:

Ã¢â‚¬Å“10.We have considered the submissions of learned counsel for the parties and taken note of the materials relied upon by them from the pleadings

on record. From the conspectus of facts and the materials produced by the prosecution, as reflected through the supplementary charge sheet and

taken note of by the learned Special Judge, N.I.A. Ranchi, in the impugned order, it appears that the appellant was involved in collecting unlawful

money in huge amount from members of the banned CPI (M) extremist organization and investing it in the name of CPI (M) co-operatives of M/s

Petron Minerals and Metal Ltd. as also in M/s Vikash Mutual Benefits Nidhi Ltd. The details of the invested money pertaining to accused persons

such as Chhotu Kherwar, investment done by the appellant and Roshan Oraon (A-4) in the name of other CPI (Maoist) members have been culled

out in the form of a tabular chart in the supplementary charge sheet dated 14.09.2018, Annexure-6 to the memo of appeal, pertaining to the role of the

present appellant. Appellant was found to have deposited the amounts pertaining to accused No. 2 Chhotu Kherwar and other maoist members, as

described in the chart under para 17.6 of the supplementary charge sheet. These activities were intended to support the activities of proscribed

terrorist organization CPI (M) during demonetization. These amounts were shown to have been earned through extortion/levy collection. The materials

collected by the Investigating Agency do lead to an opinion that there are reasonable grounds for believing that the accusation against the appellant is

prima facie true within the meaning of Section 43-D (5) of the UA (P) Act, 1967. The learned Special Judge, NIA, Act has considered the entire

materials placed on record with proper application of mind and rightly refused to release the appellant on bail, as no fresh grounds were made out.

11. Besides that, the case of the appellant does not stand on similar footing with that of Sudesh Kedia (supra) who was found to be carrying on

transport business in the area of the banned TPC organization and had to pay money for smooth running of his business, whereas the other accused

members were found to have been systematically collecting extortion amount from businessman in the concerned areas of operation.

12. In the present case, as has been pointed out by the learned counsel for the respondent N.I.A., there are about 80 witnesses to be examined and

three protected witnesses have already been examined. The examination of the witnesses and trial had got interrupted due to prolong restrictions in

the functioning of the district courts during the pandemic, which has now been substantially relaxed. The trial has resumed. Appellant has remained in

custody for about 3 Ã‚Â½ years, only till now, and as such on facts, the case of the present appellant is distinguishable from that of K.A. Najeeb (supra)

relied upon by learned counsel for the appellant.

13.Taking all these facts and circumstances into consideration, this court is of the view that the impugned order does not suffer from any such error or

illegality in application of the principles attached to grant of bail under Section 43-D(5) of the UA (P) Act, 1967 by the Special Judge, NIA, Ranchi.

We are of the considered opinion that no grounds has been made out for interference in the matter. Instant appeal is accordingly dismissed.Ã¢â‚¬â€‹

5. Balumath (Latehar) PS Case No. 161 of 2016 was registered on 21st December 2016 under sections 420 and 120-B of the Indian Penal Code and

section 17 of the Unlawful Activities (Prevention) Act, 1967 [in short, UA(P) Act]. By virtue of order dated 16th January 2018 passed by Ministry of

Home Affairs, Internal Security-I Division, this case was transferred for investigation to the National Investigation Agency (in short, NIA) Ã¢â‚¬" it was

re-registered as RC-01/2018/NIA/DLI. The appellant was made an accused in the supplementary chargesheet dated 14th September 2018 on the

allegation of committing offence under section 17 of the UA(P) Act and section 120-B of the Indian Penal Code. According to the NIA, the appellant

was closely associated with Chandan Kumar, Chhotu Kherwar, Roshan Oraon and others to help Chhotu Kherwar in furthering terrorist activities of

the CPI (Maoist) during the demonetization period. It is alleged that he collected huge amount of money from Chhotu Kherwar and other operatives of

CPI (Maoist) knowing that such funds were collected by a terrorist organization and he deposited/invested such money in different banks and with

M/s Patrons Minerals and Metals Limited as well as Sahara India Credit Cooperative Society.

6. The NIA has pleaded that the appellant was working as an agent for the members of CPI (Maoist) which is said to be a terrorist organization to

help them accomplish their economic goal. The appellant in conspiracy with CPI (Maoist) leader Chhotu Kherwar @ Birju Ganjhu, Chandan Kumar,

Roshan Oraon and others got deposited huge amount of money in cash in different accounts of Lalita Devi who is the wife of Chhotu Kherwar and

Ganita Devi and Manita Devi who are the daughters of Chhotu Kherwar. The NIA has further pleaded that the appellant deposited huge amount of

cash in the name of his wife and son and also in his own bank account. There are other materials of depositing money in Sahara India Credit

Cooperative Society in the account of Chhotu Kherwar, Lalita Devi and others and, in course of a search conducted at the house of Chandan Kumar,

several incriminating documents such as application form of Sahara India Credit Cooperative Society signed by Chandan Kumar were seized. Mr.

Amit Kumar Das, the learned Spl. PP for the NIA has referred to production-cum-seizure memo vide D-33 which discloses deposit of Rs.1,80,000/-

with M/s Petron Minerals and Metals Limited; D-39 which would disclose details of money received by the appellant from CPI (Maoist) leaders and

the investments made in their name. The learned Spl. PP for the NIA has also referred to D-40 and D-41 to support the prosecution case against the

appellant on the ground that the NIA has collected sufficient materials on involvement of the appellant in the proscribed offence.

7. In the first place, we would indicate that co-accused Roshan Oraon who is the person along with whom the appellant was maintaining the entries in

a register regarding the money received from CPI (Maoist) leaders has been granted bail by an order dated 21st September 2022 passed in Criminal

Appeal (DB) No. 591 of 2019. We may further indicate that it is admitted at the Bar that the order granting bail to Roshan Oraon is not taken in

appeal by the NIA before the HonÃ¢â‚¬â„¢ble Supreme Court.

8. Mr. A. K. Rashidi, the learned counsel for the appellant submits that the appellant who was an agent of M/s Petron Minerals and Metal Limited

and M/s Vikash Mutual Benefits Nidhi Limited is said to have collected funds from the members of CPI (Maoist) for the purpose of investment but no

material has been collected by the NIA to demonstrate that the money so deposited again came back to the members of the organization for any

terrorist activity. The learned counsel for the appellant would therefore submit that mere collection of funds from the so-called members of a terrorist

organization for the purpose of investment does not fall under the definition of terrorist act under section 15 of the UA(P) Act. The learned counsel

for the appellant further submits that the deposits shown in the name of the wife and son of the appellant need to be proved as ill-gotten money and

that must fall specifically within the ambit of section 17 of the UA(P) Act. The learned counsel for the appellant has lastly contended that long pre-

trial incarceration of the appellant on the ground that he may influence the witnesses cannot be sanctioned in law and the appellant who has remained

in custody since 21st March 2018 is entitled for bail.

9. As to the restriction under section 43-D(5) of the UA(P) Act, this has to be borne in mind that this is not the requirement in law that the accused

must demonstrate that he is not involved in the crime. This is also important to indicate that in a similar case now being prosecuted by the NIA the

HonÃ¢â‚¬â„¢ble Supreme Court granted bail to the accused who was a transporter. In Ã¢â‚¬Å“Sudesh Kedia v. Union of IndiaÃ¢â‚¬ (2021) 4 SCC 704 the

HonÃ¢â‚¬â„¢ble Supreme Court observed that an accused who was running the transport business and paid money to the terrorist organization and in this

connection was seen meeting the members of the terrorist organization may not be considered a part of the conspiracy to raise funds to promote the

organization. As to the requirement under section 43-D(5) of the UA(P) Act, in Ã¢â‚¬Å“NIA v. Zahoor Ahmad Shah WataliÃ¢â‚¬ (2019) 5 SCC 1 the

HonÃ¢â‚¬â„¢ble Supreme Court has observed as under:

Ã¢â‚¬Å“23. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the

accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to

deal with similar special provisions in TADA and Mcoca. The principle underlying those decisions may have some bearing while considering the

prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, Mcoca and the Narcotic

Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the

accused is Ã¢â‚¬Å“not guiltyÃ¢â‚¬ of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are

reasonable grounds for believing that the accused is Ã¢â‚¬Å“not guiltyÃ¢â‚¬ of such offence and the satisfaction to be recorded for the purposes of the 1967

Act that there are reasonable grounds for believing that the accusation against such person is Ã¢â‚¬Å“prima facieÃ¢â‚¬ true. By its very nature, the

expression Ã¢â‚¬Å“prima facie trueÃ¢â‚¬ would mean that the materials/evidence collated by the investigating agency in reference to the accusation against

the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of

it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or

the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has

to opine that the accusation is Ã¢â‚¬Å“prima facie trueÃ¢â‚¬, as compared to the opinion of the accused Ã¢â‚¬Å“not guiltyÃ¢â‚¬ of such offence as required under

the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for

believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a

discharge application or framing of charges in relation to offences under the 1967 Act....Ã¢â‚¬â€‹

10. This is not in the realm of any doubt that the long incarceration of an accused before conviction should not be approved by the Court. This is also

well settled that the delay in conclusion of the trial is a relevant consideration for grant of bail. In Ã¢â‚¬Å“Union of India v. K. A. NajeebÃ¢â‚¬ (2021) 3 SCC

713 the HonÃ¢â‚¬â„¢ble Supreme Court has held that notwithstanding the condition under section 43-D(5) that there are reasonable grounds to believe

that there is a prima-case against the accused long detention of the accused shall violate Article 21 of the Constitution of India.

11. In Ã¢â‚¬Å“K.A. NajeebÃ¢â‚¬â€‹ the HonÃ¢â‚¬â„¢ble Supreme Court has observed as under:

Ã¢â‚¬Å“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the

constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the

powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to

appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being

completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence.

Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of

bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to

societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the

length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left

with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and

establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well

protected.

19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than

Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and

that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely

provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence,

possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc.Ã¢â‚¬â€‹

12. In the order dated 29th March 2023 passed in Misc. Criminal Application No. 726 of 2023, the learned Special Judge (NIA) has merely

reproduced the prosecution case as set up by the NIA, the materials collected by the NIA such as confessional statement of the accused, seizures

made during the investigation and other materials which are specifically mentioned under para nos. 17.3, 17. 5, 17.6 and 17.10(i) of the chargesheet.

However, there is no discussion on the case set up by the appellant and no finding has been recorded thereon by the Special Judge and merely

extracting the provisions under section 43-D(5) of the UA(P) Act, the learned Special Judge (NIA) rejected the miscellaneous criminal application

observing that there is specific allegation against the appellant that he was working in close proximity with Chhotu Kherwar and raised funds for

terrorist act in furtherance of the criminal conspiracy. We may further indicate that in Criminal Appeal DB No. 540 of 2020 filed by the appellant,

Ã¢â‚¬Å“K.A NajeebÃ¢â‚¬ was distinguished on the ground that the appellant had remained in custody for 3 Ã‚Â½ years only and there were 276 witnesses yet

to be examined by the NIA. The learned Spl. PP for the NIA submitted that the delay in trial was occasioned due to COVID-19 pandemic and now

the trial is being conducted expeditiously and by now 22 witnesses have been examined in Special NIA Case No.01 of 2018. However, now the

appellant has remained in custody for more than five and a half years and as many as 58 witnesses are still to be examined.

13. Having regard to the aforesaid facts and circumstances in the case, more particularly, the period of detention of the appellant, we find a prima-

facie case made out by the appellant for grant of bail. Consequently, the order dated 29th March 2023 passed in Misc. Criminal Application No. 726

of 2023 which was filed in RC-01/2018/NIA/DLI corresponding to Special NIA Case No. 01 of 2018 is set-aside and the said application is allowed.

The appellant, namely, Santosh Oraon shall be released on bail in the aforementioned case on furnishing bail bond of Rs. 10,000/-(rupees ten thousand

only) with two sureties of the like amount each, to the satisfaction of the learned Additional Judicial Commissioner XVI-cum-Special Judge (NIA),

Ranchi subject to the following conditions:

(i) one of the bailors shall be Class-I legal heir of the appellant,

(ii) the appellant shall disclose his present residential address within the State of Jharkhand and provide a copy of the Aadhaar Card which shall be

verified by the investigating officer,

(iii) the appellant shall also provide his mobile phone number within one week after his released and before leaving his usual place of residence shall

duly inform the investigating officer, and

(iv) the appellant shall remain present on each date during the trial whenever his presence is required in the Court.

14. A liberty is granted to the NIA to move an application for recall of this order if the appellant violates any one of the aforementioned conditions.

15. Criminal Appeal (DB) No. 770 of 2023 is allowed in the aforesaid terms.