

Balai Charan Maity & Anr Vs National Investigation Agency

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 29, 2025

Acts Referred: Constitution of India, 1950 " Article 21
Code of Criminal Procedure, 1973 " Section 160
National Investigation Agency Act, 2008 " Section 21(4)
West Bengal Fire Services Act, 1950 " Section 26
Explosive Substances Act, 1908 " Section 3,4

Hon'ble Judges: Arijit Banerjee, J; Apurba Sinha Ray, J

Bench: Division Bench

Advocate: Milan Mukherjee, S. Banerjee, Ayan Poddar, Soumen Mohanty, Agnish Basu, Vipul Vedant, Arun Kumar Maiti, Bhaskar Prosad Banerjee, D. Tandon

Final Decision: Disposed Of

Judgement

Apurba Sinha Ray, J. :-

1. Both the petitioners claim that they are innocent and they have been falsely implicated in this case. Initially, the State Police treated the petitioners

as witnesses but unfortunately after the investigation being taken over by the National Investigation Agency (NIA in short), they were made

accused in the case. However, the brief fact of this case may be narrated as hereunder:-

In the night of 02.12.2022 three persons died when they were allegedly preparing fire crackers/bombs. Initially, the State Police investigated the

matter and submitted charge sheet under sections 304/285/286/120B of I.P.C and section 26 of West Bengal Fire Services Act, 1950 and section 3/4

of The Explosive Substances Act, 1908 against the three persons who were dead along with another namely, Panchanan Ghorai who allegedly

supplied the raw materials for preparation of such alleged fire crackers/bombs. As per direction of the Hon'ble Court in a public interest litigation,

the NIA had taken up the investigation and thereafter the present petitioners were issued notices under Section 160 Cr.P.C. for the purpose of

investigation and though the petitioners cooperated with the NIA, they were ultimately arrested by the NIA personnel after obtaining an order from

the Learned Chief Judge, City Sessions Court, Kolkata on 06.04.2024 and since then they have been languishing in the judicial custody. The bail

prayer of the present petitioners was rejected by the Learned Chief Judge, City Sessions Court, Kolkata on 15.04.2024 without applying his mind and

hence the present appeal under Section 21(4) of the NIA Act, 2008 has been preferred by the petitioners contending, inter alia, that when the

petitioners were cooperating with the NIA in the investigation, non-appearance of the petitioner on cogent grounds should have been considered by the

Learned Trial Judge before rejecting their prayer for bail.

2. Learned senior Advocate Mr. Mukherjee has further pointed out that apprehending that the NIA will take coercive steps, the petitioners moved the

Hon'ble Court and the Hon'ble Court directed NIA not to take coercive step till the panchayat election 2023 was over and further they may

be interrogated by the NIA personnel for a stipulated period of time. The NIA did not issue notice thereafter, but only when the process of general

election 2024 ensued, the NIA authority started sending notices under section 160 Cr.P.C. only to harass the petitioners who had a long association

with a political party. The learned counsel has categorically stated that such notices were issued only to harass the present petitioners and also for

political purposes.

3. The learned counsel has further submitted that considering the period of detention of the petitioners and also taking into consideration the fact that

the investigation is completed by the NIA, the petitioners may be enlarged on bail on any condition as the court may decide. As the names and

particulars of the protected witnesses are kept in sealed envelopes they are not aware of the identity of such witnesses and therefore there is no

chance for the petitioners to intimidate/influence those witnesses. Furthermore, the petitioners have deep roots with Bhupatinagar, District Purba

Medinipur, and all their properties, relatives are in the said area and therefore there is no flight risk. In recent judicial decisions of the Apex Court, it

has been categorically observed that a citizen's fundamental right for speedy justice cannot be over-looked even if the allegation is serious. No

consideration is higher than the personal liberty of a citizen under Article 21 of the Constitution of India. As there are 78 witnesses in this case and the

charge is yet to be framed, there is practically no chance of an early conclusion of the trial and hence the petitioners may be enlarged on bail on any

condition.

4. The learned senior counsel Mr. Maiti representing the NIA has vehemently opposed the prayer for bail of the petitioners. According to him, the

petitioners having tremendous influence over the local police personnel and people had directed the three deceased persons along with others to

prepare explosive bombs so that they can terrorize the local people at the time of election and gain political mileage for their party. The learned

counsel for the NIA has further submitted that the petitioners having influence over the police authority have tried to misguide the investigation carried

out by the state police by pretending that the incident occurred during preparation of normal fire crackers, but actually the same is not correct. There

are several witnesses who have been treated as protected witnesses have disclosed the role and complicity of the petitioners who indulged in the

making of explosive bombs in the garb of preparation of fire crackers. The call details record shows that the petitioner no. 1 had close connectivity

with the persons who died in the blast as a result of explosion. There are sufficient incriminating materials showing that the compositions of chemical

present in the seized items are of explosive substances. The expert of the State Forensic Science Laboratory clarified that the incident was a blast and

the same did not occur due to fire crackers fire. The petitioner no. 1 being the President of the local block Trinamool Congress (TMC) in short

hereinafter) party office was in regular contact with OC Bhupatinagar, OC of Talpattighat coastal, CI of Bhupatinagar, OC of Khejuri which indicate

that the said accused has pervasive influence on the police in that area. The learned counsel Mr. Maiti has further submitted that re-registration of the

FIR which had taken place at the instance of the wife of the deceased Rajkumar Manna cannot be said to be a second FIR. To support his contention

he has relied upon the case law of Pradeep Ram Vs. State of Jharkhand & Anr. reported in (2019) 17 Supreme Court Cases 326.

5. As the materials on record disclose that the present petitioners were acquainted with the circumstances of the case they were given notice under

Section 160 Cr.P.C. and subsequently, when they did not comply with the direction of the notice under section 160 Cr.P.C. the NIA obtained

permission from the Learned NIA Court at Calcutta and thereafter arrested both the petitioners. There are sufficient materials including whats app

messages wherefrom it is transpired that the present petitioners were involved in taking up various steps including preparation of bombs with the help

of the deceased accused and Panchanan Ghorai only for the purpose of terrorizing the people in order to gain political mileage for their party. In this

regard, the learned counsel has relied upon the case law of Pakala Narayan Swami Vs. The King-Emperor reported in 1939 SCC OnLine PC 1. It is

also contended that investigation is going on and if the petitioners are enlarged on bail they will intimidate/ influence witnesses and also tamper the

evidences. As such their prayer for bail should be rejected without any hesitation.

6. The learned counsel has also submitted that as the NIA Act is a special Act it can override the provisions of Criminal Procedure Code, 1973. In this

regard, he has relied upon the decision of Ram Nath Vs. State of Uttar Pradesh & Ors. reported in (2024) 3 Supreme Court Cases 502.

7. The learned counsel has also drawn the attention of this court to certain bizarre incidents. According to him, the NIA personnel were manhandled

and threatened at the instance of the local people and the wife of the petitioner no. 2 Manabrata Jana when the NIA personnel went to arrest Mr.

Jana. The learned counsel has also submitted that the NIA personnel were falsely implicated in several cases and the same shows the closeness of

the petitioners with the state police administration. If the petitioners are enlarged on bail they will not only influence the local witnesses but also

intimidate the protected witnesses.

Decision with reasons

8. The materials on record including CD prima facie show that the present petitioners have sufficient connectivity with the local administration. The

materials collected by the NIA further show that there are certain incriminating materials which cannot rule out the possibility of involvement of the

present petitioners with the alleged preparation of bombs/explosives for the purpose of gaining political mileage for their party with the show of muscle

power.

9. But, at the same time it has to be considered also that there are 78 witnesses to be examined at the time of trial, and charge is yet to be framed.

Therefore, there is no chance of an early conclusion of the trial and it is anybody's guess when the trial will conclude. The Hon'ble Supreme

Court has time and again reiterated that whatever be gravity and heinousness of the crime, the same cannot override the accused's fundamental

right to speedy trial and personal liberty. It cannot be overlooked by any other consideration.

10. We have considered the judicial decisions cited by the learned counsel of the NIA. We do not find, in such decisions, any whisper that bail cannot

be granted to the accused involved in the commission of offence under any of scheduled Acts. On the other hand, the recent judicial decisions of the

Hon'ble Apex Court i.e. Javed Gulam Nabi Shaik Vs. State of Maharashtra & Anr., reported in (2024) 9 SCC 813; Manish Sisodia Vs.

Directorate of Enforcement, reported in 2024 SCC OnLine SC 1920 and V. Senthil Balaji Vs. Deputy Director, Directorate of Enforcement, reported

in 2024 SCC OnLine SC 2626 lay down that however grave or heinous the crime is, the fundamental right of the accused to personal liberty and right

to speedy justice cannot be overlooked. In this case, there is no certainty when the trial will commence and when the same will conclude.

11. As the investigation is complete and there is no chance of an early conclusion of the trial in view of the huge number of witnesses and huge

number of articles and documents to be produced and proved before the trial court, we cannot say with certainty that the trial of the case will

conclude within a reasonable period of time.

12. However, as the record shows that the present petitioners are influential and have connections with the local police administration, the

apprehension that they may intimidate, influence and damage the prosecution case if they are enlarged on bail cannot be said to be a baseless

allegation. Therefore, the only remedy to cope up with such allegation is to put some conditions so that the present petitioners can be restricted in their

movement and dealing with others. Accordingly, both the petitioners may find bail of Rs. 50,000/- each with two sureties of Rs. 25,000/- each and out

of which one must be local subject to the satisfaction of Learned Chief Judge, City Sessions Court, (NIA Court, Calcutta) and also subject to following

conditions:-

(i) The petitioners shall remain within the jurisdiction of New Town Police Station, Rajarhat, Kolkata, excepting for the purpose of attending court

proceedings,

(ii) The petitioners shall meet the Bench clerk of the Chief Judge City Sessions Court, Calcutta during office hours twice in a week until further order,

and the concerned Bench clerk will record the attendance of each of the petitioners separately with endorsement and official seal, in the attendance

registers to be produced by the petitioners,

(iii) The petitioners shall furnish their local addresses where they will reside presently to the I.O. of this case as well as to the learned Trial Court.

(iv) The petitioner shall not make any attempt to intimidate, influence or tamper with evidence and shall attend the court on each date of hearing,

(v) The petitioners are further directed that they shall not reside in the same residential address during the time these bail conditions remain operative.

(vi) The NIA authority is at liberty to keep a vigil upon the petitioners and monitor the phone calls of the petitioners,

(vii) Each petitioner shall be entitled to use only two mobile phone numbers after disclosing the said phone numbers to the concerned I.O.

13. If the petitioners or any of the petitioners fail or fails to comply with any of the conditions as imposed upon them the instant bail order shall stand

cancelled without any further reference to this court.

14. CRA (DB) 121 of 2024 and CRAN 1 of 2024 are accordingly disposed of.

15. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.