

(2023) 10 PAT CK 0002

In the Patna High Court

Case No : Criminal Appeal (DB) No. 172 Of 2023

Haji Saleem @ Saleem Ahmad

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 03-10-2023

Acts Referred:

National Investigation Agency Act, 2008 — Section 6(5), 8, 21(4)
Explosives Substances Act, 1908 — Section 3, 4, 5
Unlawful Activities (Prevention) Act, 1967 — Section 16, 17, 18, 18B, 20, 23, 38, 39, 40, 43D(5)
Indian Penal Code, 1860 — Section 120B, 468, 471
Code of Criminal Procedure, 1973 — Section 164, 173

Citation : (2023) 10 PAT CK 0002

Hon'ble Judges : Vipul M. Pancholi, J;Chandra Shekhar Jha, J

Bench : Division Bench

Advocate : Arshad Alam, Anjum Perveen, P.K. Jha, Krishnanandan Singh, Manoj Kumar Singh, Prakriteta Sharma, Pramod Kumar, Abhijeet Gautam, Shivaditya Dhari Sinha, Parmeshwar Mehta

Final Decision : Dismissed

Judgement

1. The present appeal has been filed under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter, referred as 'NIA Act') against order dated 03.01.2023 passed by the learned Special Judge, N.I.A., Patna in Special Case No. 09 of 2021/R.C. No. 13/2021, whereby the said Court has rejected the bail application filed by the present appellant.

2. The factual matrix of the present case is as under:-

"The case bearing F.I.R. No. 26 of 2021 dated 17.06.2021 was registered at Railway P.S. Darbhanga, District Muzaffarpur Rail, Bihar under Sections 3, 4 and 5 of The Explosives Substances Act, 1908. It is alleged in the said F.I.R. that on 17.06.2021, Train No. 07007 Secunderabad-Darbhanga Express reached at Platform No. 2 of Darbhanga Railway Station around 13:25 hours. Parcel Van VPU No.- SC-07829 was opened and seven packets having destination as

Darbhanga were taken off. During the process of shifting of parcels, one package which was booked from Secunderabad, exploded and caught fire. The said parcel was packed by one Mohd. Sufiyaan from Secunderabad for himself.”

2.1 After filing of the aforesaid F.I.R., the Central Government was of the opinion that the scheduled offence under N.I.A. Act has been committed and having regard to the gravity of the offence, its ramification on national security, it is required to be investigated by the N.I.A. in accordance with the N.I.A. Act. The Government of India, Ministry of Home Affairs, CTCR Division, North Block, New Delhi vide order dated 24.06.2021, issued as per provision of Section 6 (5) read with Section 8 of the N.I.A. Act, directed the N.I.A. to take up investigation of the aforesaid case. In view of the aforesaid order, the N.I.A. re-registered the said F.I.R. vide RC No. 13/2021/NIA/DLI dated 24.06.2021 under Sections 3, 4 and 5 of the Explosives Substances Act. Thereafter, Section 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter, referred as 'UAPA Act') were invoked by the N.I.A Special Court, Patna vide order dated 02.07.2021. Thereafter, during the course of the investigation, the appellant herein, came to be arrested and, therefore, the appellant directly filed regular bail application before this Court. However, the same was withdrawn with a view to file a fresh application before the appropriate Court. Thereafter, the appellant filed bail application before the concerned Trial Court. However, vide order dated 03.01.2023, the concerned Court has dismissed the bail application submitted by the appellant and, therefore, he has preferred the present appeal.

3. Heard learned Advocate Mr. Arshad Alam assisted by Ms. Anjum Perveen and Mr. P.K. Jha for the appellant and Mr. Krishna Nandan Singh, learned A.S.G for the Union of India assisted by Mr. Manoj Kumar Singh, Mrs. Prakriteta Sharma, Mr. Pramod Kumar, Mr. Abhijeet Gautam and Mr. Shivaditya Dhari Sinha and Mr. Parmeshwar Mehta, learned A.P.P. for the Respondent-State.

4. Learned counsel for the appellant would mainly submit that the F.I.R. came to be filed invoking Sections 3, 4 and 5 of the provisions of the Explosives Substances Act against unknown person and, therefore, the name of the present appellant was not mentioned in the said F.I.R. However, the appellant has been implicated on the basis of the confessional statement given by the co-accused. It is submitted that the appellant was arrested on 02.07.2021 and since then he is in custody i.e. for more than 2 years. It is further submitted that the appellant is aged about 72 years and suffering from a number of diseases. It is also contended by the learned counsel that as per the charge-sheet filed against the accused by the N.I.A., 95 witnesses are to be examined during the course of the trial and out of which, as on today, approximately 6 witnesses have been examined and, therefore, the trial of the present case would not be concluded in near future. Learned counsel, therefore, urged that on this ground, the appellant be released on bail.

5. Learned counsel for the appellant would further submit on merits by contending that even in the papers of the charge-sheet, there is no material

collected by the Investigating Agency against the appellant. The appellant has been implicated on the basis of the confessional statement given by the co-accused by invoking Section 120(B) of the Indian Penal Code. It is submitted that only on the basis of the so called telephonic talk made between the appellant and the other co-accused, the aforesaid provisions have been invoked. It is submitted that for invoking Section 120(B) of the I.P.C., meeting of mind is required and for that, physical presence of the accused would be required. However, the Investigating Agency has failed to collect any material connecting the appellant with the alleged occurrence.

6. Learned counsel would further submit that there is no direct evidence against the appellant in the papers of the charge-sheet and only two witnesses have stated that the present appellant is an arms supplier. However, there is no proof collected by the Investigating Agency that the said arms were supplied to whom by the appellant. Learned counsel for the appellant, therefore, urged that the appellant be enlarged on bail during the pendency of the trial.

7. Learned counsel has placed reliance upon the decisions rendered by the Hon'ble Supreme Court on 25.08.2022 in Criminal Appeal No. 1066 of 2010 in the case of Ram Sharan Chaturvedi Vs. The State of Madhya Pradesh, reported in 2022 SCC OnLine SC 1080. Learned counsel has more particularly referred to Paragraphs 22, 24, 25 and 27 of the said decision.

8. On the other hand, learned A.S.G. has vehemently opposed this appeal and the request of the appellant for the grant of bail by referring to the averments made in the counter-affidavit filed on behalf of the Respondent-Agency. Learned A.S.G. has also referred the separate compilation i.e. the papers of the charge-sheet supplied by him to the Court. It is contended that during the course of the Investigation, it is revealed that on 15.06.2021, one parcel was booked in the name of Mohd. Sufiyaan, which was further transported in Train No. 07007 Secunderabad-Darbhanga Express. On 17.06.2021, the train reached at Platform No. 2 of Darbhanga Railway Station and from there while it was brought to Platform No. 1, a low intensity explosion took place close to the Railway Parcel Office of Darbhanga Railway Station. On the basis of the C.C.T.V. footages retrieved from the camera installed in front of Parcel Office, Secunderabad, two suspects namely Nasir Khan @ Nasir Malik of U.P. at present residing at Telangana, and Imran Malik @ Imran Khan resident of U.P. and presently residing in Telangana, were identified. The aforesaid two persons were interrogated and both of them confessed their role in commission of the crime in the present case. Therefore, both the aforesaid persons/accused were arrested on 30.06.2021. It is further submitted by learned A.S.G. that during the course of the investigation, it was further revealed that the explosion at Darbhanga Railway Station took place under a conspiracy of Lashkar-e-Taiba (LeT), a proscribed terrorist organization intending to threaten the unity, integrity, economic security and sovereignty of India and to strike terror in the minds of the people of India by placing Improvised Explosive Device (IED) in a running passenger train and to

cause maximum loss of life and property. However, the blast could not take place at the place which was intended i.e. in a running long distance passenger train and the Improvised Explosive Device (IED) exploded at the Darbhanga Railway Station. It is also revealed that Lashkar-e-Taiba (LeT) member Hafeez Iqbal @ Iqbal Kana of Pakistan motivated and recruited Md. Nasir Khan @ Nasir Malik, Imran Malik, Haji Saleem @ Saleem Ahmad (appellant herein) and Kafil Ahmed @ Kafil.

9. Learned A.S.G. would further submit that it is revealed during the course of the investigation that on the directions of Iqbal Kana, the appellant herein had established contact with Md. Nasir Khan and Imran Malik as Md. Nasir Khan was trained operative of Lashkar-e-Taiba (LeT) in India. On directions of Iqbal Kana, the appellant herein started to monitor, supervise and support activities of Md. Nasir Khan and Imran Malik. Further, on directions of Iqbal Kana, in order to hatch the conspiracy to commit the offence in the present case, the meetings were held in December 2020 and February 2021 at the house of the appellant/accused Haji Saleem @ Saleem Ahmad, which is situated at Mohalla-Multaniyan, Aukhurd, Kairana, Shamli, Uttar Pradesh. The said meetings were attended by all the four accused in the present case i.e. Md. Nasir Khan, Imran Malik, Haji Saleem (the appellant) and Kafil Ahmad.

9.1 Thereafter, the funds were mobilised from Pakistan through Lashkar-e-Taiba (LeT) member i.e. the accused Iqbal Kana. The said funds had been received by the present appellant and the other three accused. Further, the accused Imran Malik disclosed that the I.E.D., which exploded on 17.06.2021 at Darbhanga Railway Station, was prepared with the help of his brother i.e. accused Nasir Khan at the behest of Pakistan based Lashkar-e-Taiba (LeT) operative Iqbal Kana using chemicals. After preparing the I.E.D., both the accused Imran Malik and Nasir Khan carefully covered the I.E.D. with garments and packed it in a parcel. Both the aforesaid accused, thereafter, transported the parcel containing I.E.D. to the Secunderabad Railway Station Parcel Office in a car on 15.06.2021. At the Parcel Office, accused Imran Malik impersonated himself as person namely Md. Sufiyan and moved the parcel in the same name with the help of a forged copy of a PAN Card in the same name. Thereafter, the appellant herein directed Imran Malik to inform him after the execution of parcel bomb for further informing about the same to the leadership of Lashkar-e-Taiba (LeT) through Iqbal Kana. Accordingly, on 15.06.2021, the appellant herein received photographs of parcel bomb through Kafil as Imran Malik had forwarded these pictures to Kafil. Thereafter, the appellant forwarded these photographs to Iqbal Kana to inform about the accomplishment of task.

10. Learned A.S.G. has thereafter submitted that on the basis of the disclosure statement of the accused Nasir Khan and Imran Malik, the appellant and Kafil Ahmed were questioned by N.I.A. and subsequently both the aforesaid accused were arrested on 02.07.2021. It is also submitted that after the investigation was over, charge-sheet has been filed against the appellant on 23.12.2021 under

Sections 16, 17, 18, 18(B), 20, 23, 38, 39, 40 of the U.A.P.A. Act, Sections 120(B), 468 and 471 of the I.P.C. and under Sections 3, 4 and 5 of the Explosive Substances Act. Learned A.S.G. has further submitted that there is also another F.I.R. which has been filed against the appellant.

11. At this stage, learned A.S.G. has also referred the separate compilation i.e. the papers of the charge-sheet from which he has pointed out that on the basis of the confessional statement recorded under Section 164 of the Code of Criminal Procedure (hereinafter, referred as the 'Code') of all the accused, certain other materials in the form of C.D.R. Analysis Report has also been collected from which, it is prima facie established that the present appellant was in contact with the other co-accused. Learned A.S.G. has also referred to the C.C.T.V. footages and the role attributed to the present appellant in the papers of the charge-sheet. It is submitted by the learned A.S.G. that from the papers of the charge-sheet, a prima facie case has been made out against the appellant and, therefore, under proviso of Section 43(D)(5) of the U.A.P.A. Act, the bail application filed by the present appellant may not be entertained.

12. Learned A.S.G. has also referred the punishment prescribed for the alleged offences and more particularly referred to the provisions contained in Sections 3, 4 and 5 of the Explosive Substances Act which has been invoked against the appellant. It is also submitted that now the trial has already commenced and, therefore, the request made by the appellant for the grant of bail may not be entertained.

13. We have considered the submissions canvassed by the learned counsels appearing for the parties. We have also perused the materials placed on record and the report filed under Section 173 of the Code i.e. the charge-sheet filed against the appellant by the Investigating Agency. It would emerge from the record that initially F.I.R. came to be registered with Railway P.S. Darbhanga, District Muzaffarpur Rail, Case No. 26 of 2021 dated 17.06.2021. However, looking to the seriousness of the matter, the Central Government thought it fit to hand over the investigation of the said case to the N.I.A. and, therefore, the same is registered before N.I.A. It is true that the appellant is not named in the F.I.R. However, from the investigation papers, it is revealed that on the basis of the statement of co-accused namely Nasir Khan and Imran Malik, which were recorded under Section 164 of the Code, the appellant was also interrogated and his statement is also recorded under Section 164 of the Code and the appellant has been arrested on 02.07.2021.

14. From the materials placed on record and the papers of the charge-sheet supplied by the learned A.S.G., it is revealed that the accused Md. Nasir Khan @ Nasir Malik and Imran Malik were arrested by the Investigating Agency. During interrogation, their confessional statement under Section 164 of the Code has been recorded. The said accused have narrated in detail about the method and manner in which they have committed the alleged offences. It is revealed that meetings at the place of the appellant herein were held at his house in December

2020 and February 2021. The said meetings were attended by all the four accused namely, Md. Nasir Khan, Imran Malik, Haji Saleem (the appellant) and Kafil Ahmed. The funds were mobilised from Pakistan through Lashkar-e-Taiba (LeT) member i.e. the accused Hafeez Iqbal @ Iqbal Kana. The said funds had been received by the appellant herein and the other three accused persons. Imran Malik as well as Md. Nasir Khan transported the parcel containing I.E.D. to the Secunderabad Railway Station Parcel Office in a car on 15.06.2021. The C.C.T.V. footages were also recovered by the Investigating Agency. The appellant directed Imran Malik to inform him after the execution of the parcel bomb for further informing about the same to the leadership of Lashkar-e-Taiba (LeT) through Iqbal Kana. Accordingly, on 15.06.2021, the appellant received photographs of parcel bomb through Kafil Ahmed as Imran Malik had forwarded the pictures to Kafil Ahmed. The appellant forwarded these photographs to Iqbal Kana to inform about the accomplishment of the task. The Investigating Agency has collected the C.D.R. of the mobile phones used by the accused from which it is also revealed that the appellant was in contact with the other accused. Even the statement of the appellant under Section 164 of the Code has also been recorded.

15. It is a case of the learned counsel for the appellant that the provisions contained in Section 120(B) of the I.P.C. would not be attracted as there was no physical meeting of mind between the accused. In support of the said contention, learned counsel has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of Ram Sharan Chaturvedi Vs. The State of Madhya Pradesh (supra). The Hon'ble Supreme Court in the said case has held that principal ingredient of the offence of criminal conspiracy under Section 120(B) of the I.P.C. is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. An agreement forms the code of the offence of conspiracy and it must surface in evidence through some physical manifestations.

15.1 We are of the view that the aforesaid decision would not render any assistance to the appellant at this stage. In the aforesaid case, the Hon'ble Supreme Court was dealing with the appeal challenging the judgment of the High Court of Madhya Pradesh rendered in Criminal Appeal, whereby the conviction of the concerned appellant was confirmed by the High Court. While examining the evidence produced before the Court, the Hon'ble Supreme Court has made observations with regard to the evidence laid by the prosecution. However, in the present case, we are dealing with the request made by the appellant for grant of bail. Further, prima facie, from the materials produced by the Investigating Agency in the papers of the charge-sheet, it can be said that prima facie, the appellant was in contact with the other co-accused and the meeting was also held at the residence of the appellant. Thus, we are of the view that the aforesaid decision would not render any help to the appellant.

16. At this stage, we would like to refer to the provisions contained in Section

43(D)(5) of the U.A.P.A. Act which provides as under:-

“(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.”

17. From the aforesaid provisions, it is clear that if the Court is of the opinion on perusal of the case diary or the report made under Section 173 of the Code, there are reasonable grounds for believing that accusation against the accused is prima facie true, then such accused person shall not be released on bail.

17.1 In the present case, from the report made under Section 173 of the Code and the papers produced before us, we are of the opinion that there are reasonable grounds for believing that the accusation against the appellant is prima facie true and, therefore, the appellant is not required to be enlarged on bail.

18. At this stage, we would like to refer relevant provisions of Section 3 and Section 4 of Explosive Substances Act, which is held as under:-

“3. Punishment for causing explosion likely to endanger life or property.—Any person who unlawfully and maliciously causes by—

(a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than ten years, and shall also be liable to fine;

(b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.—Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires to cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance

or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished,—

(i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

19. From the aforesaid provisions, it is revealed that for causing explosion which is likely to endanger life or property, punishment for life imprisonment or with rigorous imprisonment which shall not be less than 10 years is prescribed. Similarly, under Section 4 of the said Act, punishment for life imprisonment is prescribed.

19.1. The charge-sheet has been filed against the appellant for commission of the alleged offences punishable under Sections 3, 4 and 5 of the Explosives Substances Act and even charge is also framed under the said provision. Thus, while deciding the request made by the appellant for grant of bail, the severity of the punishment prescribed for the alleged offences are also required to be kept in mind.

20. Now, it is the case of the appellant that he is aged about 72 years, and out of 95 witnesses, till date the prosecution has examined only 6 witnesses, and when the appellant is in jail since last more than 2 years, he may be released on bail. However, we are of the view that looking to the overall facts and circumstances of the present case as observed hereinabove, we are not impressed by the aforesaid submissions canvassed by the learned counsel. Once again, it is to be noted that the maximum punishment prescribed for the alleged offences is life imprisonment and, therefore, merely because the appellant is in jail since last 2 years, he is not to be enlarged on bail only on this ground and that too when serious allegations are levelled against the appellant in the papers of the charge-sheet and further when there is a provision contained in Section 43(D)(5) of U.A.P.A. Act.

21. In view of the aforesaid discussions, we are not inclined to entertain the present appeal.

22. Accordingly, this appeal is dismissed.