
(2020) 10 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 322 Of 2020 (O&M)

Satpal Singh

APPELLANT

Vs

National Investigation Agency, New Delhi

RESPONDENT

Date of Decision : 13-10-2020

Acts Referred:

National Investigation Agency Act 2008 — Section 21(4)
Unlawful Activities Prevention Act, 1967 — Section 13, 17
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21, 27A, 29
Indian Penal Code, 1860 — Section 120B
Code Of Criminal Procedure, 1973 — Section 173(8), 439

Citation : (2020) 10 P&H CK 0116

Hon'ble Judges : S. Muralidhar, J; Avneesh Jhingan, J

Bench : Division Bench

Advocate : Rukhmini Bobde, Rohit Dutta, Supratic Roy, Prabhat Kumar Srivastava, Nivesh Kumar, Priyata Chakraborty, Amit Srivastava, Sukhdeep Singh Sandhu

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1. This appeal under Section 21 (4) of the National Investigation Agency Act 2008 (NIA Act) is directed against an order dated 4th July, 2020 passed by the learned Special Judge, NIA, Punjab, S.A.S. Nagar (Mohali) (hereafter, 'Special Judge, NIA') in NIA case RC-03/2020/NIA/DLI, dated 22nd January, 2020 under Sections 13 and 17 of the Unlawful Activities Prevention Act, 1967 (UAPA), Sections 21, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act 1988 (NDPS Act), and Section 120-B of IPC registered at Police Station (PS) NIA, New Delhi. By the said impugned order the Special Judge, NIA dismissed the Appellant's application for regular bail under Section 439 of the Code of Criminal Procedure (CrPC).

2. For the purpose of the present appeal, the facts need not be discussed in

great detail. Initially, FIR No.75 dated 31st May 2019 was registered at PS Tarsika Amritsar against three persons viz., Jagbir Singh Samra (A-1), Harpreet Singh @ Happy (A-2) and Varinder Singh Chahal (A-3) on the basis that they were found to be in possession of 400 grams, 90 grams and 10 grams of heroin, respectively. Subsequently, the case was handed over to the State Special Operation Cell (SSOC), Amritsar. Thereafter, three more accused viz., Nirmal Singh @ Neeldhari (A-4) Satpal Singh (the present Appellant) (A-5) and Hiralal (A-6) were arrested on 2nd, 5th and 9th December, 2019 respectively. It is stated that the SSOC investigation revealed that Harmeet Singh@Ph.D (A-10), self-styled chief of the Khalistan Liberation Force (KLF) based in Pakistan, and Jasmeet Singh Hakimzada (A-9) stated to be involved in smuggling heroin and psychotropic substances around the world hatched a conspiracy to run a narco-terror network through drug smugglers and hawala operators based in Punjab Jammu & Kashmir and Delhi.

3. On 8th January 2020, the SSOC added Sections 13 and 17 UAPA and an intimation in that regard was sent to the central government, on whose orders, the NIA took over the investigation of the case and registered the original case as RC-03/2020/NIA/DLI under Sections 13 and 17 UAPA and Sections 21 and 29 of the NDPS Act on 22nd January 2020. NIA filed the first supplementary chargesheet in the Court of the Special Judge NIA on 29 th May 2020.

4. Specifically against the present Appellant, the case of the NIA is that he has a licenced shop for foreign exchange in the name of Chahat Selection; behind the veil of operating the foreign exchange business he started dealing in hawala transactions for easy money. It is alleged that the Appellant was having direct relations with A-9. According to the prosecution during the period between January and March 2019, on A-9's directions, A-4 collected the proceeds of the drug transactions from A-1 and A-3 and handed it over to the Appellant. It was then channelized through Harjeet Singh@ Bagga (A-7) and Parminder Pal Singh@Bobby (A-14), both of whom worked for A-9. It is alleged that the Appellant has committed offences punishable under Section 120-B IPC read with Sections 27-A and 29 of the NDPS Act.

5. It is stated that the Appellant had initially applied for bail in the Special Court, Amritsar under Section 439 of CrPC. When that application was heard by the Special Court, Amritsar on 10th January, 2020, the Court was informed that in the aforesaid FIR No. 75/2019, Sections 13 and 17 of the UAPA had been added by Rapat No. 13 of 8th January, 2020. Subsequently, on 21st January, 2020 the said bail application was rejected by the Special Court, Amritsar. On the very next day, the NIA took over the case and registered FIR No. 75/2019 as RC-03/2020/NIA/DLI under Sections 13 and 17 of the UAPA Act and Sections 21 and 29 of the NDPS Act. Here the Appellant was shown as A-5.

6. The Appellant then applied for bail in this Court by filing CRM-6185-2020. However, this bail application came to be dismissed as withdrawn by the Appellant on 13th June, 2020 with liberty to "pursue his remedy before the

appropriate forum in accordance with law".

7. In the impugned order dated 4th July, 2020, the learned Special Judge has taken note of the fact that there was an earlier bail application filed by the present Appellant, which had been dismissed on 21st January, 2020. According to the learned Special Judge, NIA, the Appellant had failed to point out any change in circumstances having taken place after the dismissal of the first bail application. However, the Special Judge, NIA, also took note of the specific allegations against the Appellant in the chargesheet filed by the NIA. In view of the nature and gravity of the offence, the Special Judge was of the view that this was not a fit case for grant of regular bail.

8. This Court has heard the submissions of Ms. Rukhmini Bobde, learned counsel for the Appellant and Mr. Sukhdeep Singh Sandhu, Special Prosecutor, NIA.

9. Ms. Bobde, learned Counsel for the Appellant took exception to the observation of the learned Special Judge, NIA that there was no change in the circumstances after the dismissal of the first bail application of the Appellant on 21st January, 2020 by the Judge, Special Court, Amritsar. She pointed out that one of the co-accused Harjit Singh had been granted bail by this Court on 29th January, 2020 in CRM-3804-2020. She also pointed out that it was only after 21st January 2020, that the case was transferred to NIA and a supplementary charge sheet was filed. As a third circumstance, she points out that the Appellant is a patient of chronic diabetes and that being a patient with co-morbidities, there would be an element of risk to his health if he were to continue to remain in prison during the Covid-19 period.

10. While Ms. Bobde is right in pointing out that there has been a change in circumstances since the NIA took over the investigation after 21st January, 2020, the fact remains that the order dated 29th January, 2020 passed by this Court in CRM-3804-2020 only granted interim bail to the co-accused Harjit Singh. It has also been pointed out Mr. Sukhdeep Singh Sandhu, Special Prosecutor, NIA that this Court by an order dated 4th August, 2020 has cancelled the aforesaid order dated 29th January, 2020 and dismissed the application of Harjit Singh as withdrawn with liberty to pursue his remedies before the jurisdictional Special Court. He continues in custody as of date.

11. As regards the aspect of the Appellant's role in the case, which would touch upon on the merits of the bail application, this Court had by an order dated 1st September, 2020, required Mr. Sandhu to apprise the Court of the status of investigation by filing a short status report. Pursuant thereto, Mr. Sandhu has placed before the Court, in a sealed cover, the status report of the investigation. While the details that emerge from the status report need not be discussed at this stage, it may be noted that some of the key co-accused persons are yet to be arrested as they are out of the country.

Investigations are stated to be underway under Section 173 (8) CrPC to unearth the larger conspiracy involving all the accused.

12. The Court notes that the case against the Appellant is for the offences Section 120-B IPC read with Sections 27-A and 29 of the NDPS Act. The threshold that the Appellant has to cross in order to make out a case for regular bail is much higher than in a routine criminal case. Since any observation at this stage touching upon merits of the case may prejudice the case of the Appellant, it would suffice to note that in view of the stage at which the investigation is and the role that has been attributed to the Appellant by the NIA and the corresponding offences under the NDPS Act as stated in the supplementary charge sheet, the Appellant, in the considered view of the Court, does not satisfy the minimum threshold that is required to be met in terms of the NDPS Act, for grant of regular bail. As regards the circumstance of the Appellant suffering from chronic diabetes, the Court has no reason to doubt that the prison authorities will ensure that the Appellant receives the appropriate medical attention and treatment that is required to be extended to him.

13. It is possible that the Appellant may at the stage of order on charge, be able to make out a case for bail depending on what emerges then. However, the Court is not satisfied that at the present stage the Appellant has made out a case for grant of regular bail.

14. Ms. Bobde then prays for a direction to expedite the framing of charges as the trial Court is not otherwise taking up such matters during the Covid-

19 period. Mr. Sandhu does not object to this.

15. Given the fact that the charge sheet vis-à-vis the present Appellant was filed on 29th May 2020, a direction is issued to the Special Judge, NIA to expedite the hearing and pass an order on charge in accordance with law not later than 31st March, 2021. It is clarified that at the said stage it would be open to the Appellant to renew his prayer for bail before the Special Judge, NIA.

16. The appeal is dismissed in the above terms. The status report that has been re-sealed be returned forthwith to the counsel for NIA.