

(2022) 09 JH CK 0024

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 109 Of 2022

Singrai Soren

APPELLANT

Vs

National Investigation Agency

RESPONDENT

Date of Decision : 12-09-2022

Acts Referred:

Arms Act, 1959 — Section 25(1AA), 25(1B)a, 26, 35
Explosive Substances Act, 1908 — Section 3, 4, 5
CRiminal Law Amendment Act, 1932 — Section 17
Unlawful Activities (Prevention) Act, 1967 — Section 13, 16, 17, 18, 19, 20, 21, 43D(5)
Code Of Criminal Procedure, 1973 — Section 161, 164, 173?? ???Arms Act, 1959 —
Section 25(1AA), 25(1B)a, 26, 35
Explosive Substances Act, 1908 — Section 3, 4, 5
CRiminal Law Amendment Act, 1932 — Section 17
Unlawful Activities (Prevention) Act, 1967 — Section 13, 16, 17, 18, 19, 20, 21, 43D(5)
Code Of Criminal Procedure, 1973 — Section 161, 164, 173?? ?Arms Act, 1959 —
Section 25(1AA), 25(1B)a, 26, 35
Explosive Substances Act, 1908 — Section 3, 4, 5
CRiminal Law Amendment Act, 1932 — Section 17
Unlawful Activities (Prevention) Act, 1967 — Section 13, 16, 17, 18, 19, 20, 21, 43D(5)
Code Of Criminal Procedure, 1973 — Section 161, 164, 173

Citation : (2022) 09 JH CK 0024

Hon'ble Judges : Rongon Mukhopadhyay, J; Ambuj Nath, J

Bench : Division Bench

Advocate : Prabhat Kr. Sinha, A.K. Das

Final Decision : Dismissed

Judgement

1. Heard Mr. Prabhat Kr. Sinha, learned counsel for the appellant and Mr. A.K. Das, learned Spl. P.P. for the National Investigation Agency.
2. This appeal is directed against the order dated 03.01.2022 passed in Misc. Cr. Application No. 1188/2021, arising out of Dumri P.S. Case No. 26/2018, corresponding to Special NIA Case No. 05/2018 (R.C. No.19/18/NIA/DLI) by the learned A.J.C-XVI-cum-Special Judge, NIA, Ranchi, whereby and whereunder the prayer for bail of the appellant has been rejected.

3. It has been alleged that on 05.03.2018 a secret information was received by the Superintendent of Police, Giridih that cadre members of banned organization CPI (Maoist) belonging to Bihar-Jharkhand Special Area Committee namely, Prayag Manjhi, Ram Dayal Mahto, Anal Da, Ajay Mahto, Santosh Da, Beer Sen Da, Krishna Da, Sunil Manjhi, Charlis, Sohan Bhuiyan, Bahamuni Di, Geeta Di and Sanjoti Di along with 50-60 others had assembled in village Akbaki Tand, District-Giridih with arms and ammunitions for organizing a meeting to instigate the villagers against the policy of the Government, Operation Green Hunt, to execute destructive activities, disrupt public peace, to execute the Police informants by holding Jan Adalat, to organize terrorist activities and to expand the organization. On such information, a team was constituted which laid a siege at village Akbaki Tand. In the morning search operation was conducted. One person who was holding an SLR rifle was chased and apprehended who disclosed his name as Charlis @ Dinesh Manjhi. He was searched and various incriminating articles were recovered from his possession. Another naxalite who was holding an AK-47 rifle was also apprehended who disclosed his name as Sunil Manjhi @ Sunil Soren. Thereafter the other naxalites were apprehended and a huge cache of arms, ammunitions and other incriminating articles were recovered from their possession.

4. Based on the aforesaid allegations Dumri P.S. Case No. 26/2018 was instituted for the offences punishable u/s 141, 121(A), 124(A), 120(B) of the IPC, Sections 25(1-AA), 25(1-B)a, 26, 35 of the Arms Act, Sections 3, 4 and 5 of the Explosive Substance Act, Section 17 of the CLA Act and Sections 13, 16, 17, 18, 19, 20, 21 of the U.A.(P) Act, 1967 against 31 named accused persons and 25-30 unknown persons.

5. The Government of India, Ministry of Human Affairs, New Delhi vide order dated 09.05.2018 directed the National Investigation Agency to take up investigation of Dumri P.S. Case No. 26/2018 which was subsequently re-registered as R.C-19/2018/NIA/DLI (NIA No. 5/18).

6. Mr. Prabhat Kumar Sinha, learned counsel for the appellant has submitted that the appellant is not named in the First Information Report and has been implicated only on account of the fact that his son is a named accused person. It has been submitted that as per the charge-sheet of the NIA the appellant used to give shelter to the Maoists. The harboring of Maoists could be attributed to the son of the appellant from whom several incriminating articles were recovered. He has submitted that arms and ammunitions were also recovered from the house of the son of the appellant. Mr. Sinha, has submitted that the appellant is in custody since 23.04.2021 and the evidence collected by the NIA does not make out a prima facie case u/s 43-D(5) of the Unlawful Activities (Prevention) Act (hereinafter referred to as the UAP Act for the sake of brevity) so far as the present appellant is concerned.

7. Mr. A.K. Das, learned Spl. P.P. has drawn the attention of the Court to the fact that charge-sheet was submitted by the NIA showing the appellant as an

absconder. He has submitted that on 23.04.2021 he was arrested and on 17.05.2022 charge has also been framed against the appellant. In fact for seeking information about the whereabouts of the appellant the NIA had announced a cash reward of Rs. 50,000/- to any person who gives such information. It has been submitted that the appellant was involved in terrorist activities and the residential premises from where arms and ammunitions were recovered belongs to the appellant. He thus submits that a prima facie case is made out against the appellant and, therefore, he does not deserve to be granted bail.

8. We have heard the learned counsel for the respective parties and have also perused the materials available on record.

9. Though the appellant was not named in the First Information Report but his significant presence and involvement in the terrorist organization has come to light in course of investigation by the NIA. The appellant who was arrayed as A-9 is the father of Chitranjan Soren (A-11) who has been named in the First Information Report. His role has been described with aiding the terrorist organization CPI (Maoist) by harboring the cadre members of the organization in his residential premises as also concealing prohibited arms and ammunitions and explosive substances. In fact from the residential premises of the appellant a huge cache of arms and ammunitions as well as explosive substances were recovered which are as follows:

- a) One loaded INSAS Rifle bearing registration no. IBI RFI 2006-18007-438 with 8 live rounds in his Magazine and without Karf and Guard
- b) One loaded INSAS Rifle bearing registration no. SKF 2003-16547937 with 7 live rounds in his Magazine
- c) One loaded .303 rifle bearing no. 50928 with 5 live rounds in Magazine
- d) One loaded .303 rifle bearing no. 62317 GRI 1949 with 5 live rounds in Magazine
- e) One loaded .303 rifle bearing no. 11925 M 1944
- f) One US rifle 30M1 bearing registration no. 4380155 with 2 live rounds in Magazine
- g) One black colour pouch for keeping bullets/rounds, have hidden 190 live rounds/bullets of .303
- h) One black colour shoulder bag having 10 pouch to keep rifle bullets/rounds
- i) One black colour Naxalite dress pent shirt, in shoulder bag
- j) Naxalite pamphlet having symbol of spokesperson " Purvi Regional Bureau Bharatiya Communist Party (Maoist)"
- k) 6 pieces of cordtex wire.

l) Cylinder of 2 litre capacity to be used in cylinder bomb.

m) One black colour Micromax mobile phone having no SIM card and missing IMEI number, one MONIX company mobile handset without SIM card and with IMEI no. as 357219051135502 and 357219051135510, one bright colour mobile handset with Airtel SIM card having no. 89915221000007694918, IMEI no. as 3595805317035-9.

n) Black colour of Cloth bags for keeping of Bullets

10. Section 43-D(5) of the U.A.(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.

11. In the case of "NIA versus Zahoor Ahmad Shah Watali" reported in (2019) 5 SCC 1, it has been 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.”

12. The rigors of Section 43-D(5) of the UAP Act will not apply if the materials produced by the Investigating Agency do not prima facie make out a case against an accused. However, in the present case the materials collected during investigation will lead to the embargo u/s 43- D(5) of the UAP Act being squarely applicable to the case of the appellant. The appellant appears to be deeply involved in harboring the cadre of the banned terrorist organization CPI (Maoist) as well as stockpiling arms, ammunitions and explosive substance in his residential premises and the defence of the appellant fixing the entire burden upon his son does not virtually have any legs to stand. The materials collected further indicate that the father son duo (A-9 and A-11) were both involved in terrorist activities.

13. The learned court below had rejected the prayer for bail of the appellant having regard to a prima facie case having been made out against the appellant and there being no occasion to conclude otherwise, this appeal fails and the same is hereby dismissed.