

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 586 of 2022

Rakesh Kumar Paswan @ Aryan Ji, S/o Prakash Ram Paswan, R/o Village-Darha, P.O. Shivraipur, P.S. Lawalong, District-Chatra.

....Appellant

Versus

The State of Jharkhand through National Investigating Agency.

.....Respondent

**Coram: THE HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
THE HON'BLE MR. JUSTICE AMBUJ NATH**

For the Appellant : Mr. A.K. Chaturvedy, Advocate

For the NIA : Mr. Amit Kumar Das, Special P.P.

09/ 4/01/2023 Heard Mr. A.K. Chaturvedy, learned counsel for the appellant and Mr. Amit Kumar Das, learned Special P.P. NIA.

2. This appeal is directed against the order dated 16.2.2022, passed by Shri Madhuresh Kumar Verma, learned Additional Judicial Commissioner-XVI cum Special Judge, NIA, Ranchi in Misc. Cri. Application No. 125 of 2022 in connection with Balumath P.S. Case No. 225 of 2018, corresponding to Special (NIA) 01/2019, whereby and whereunder the prayer for bail of the appellant has been rejected.

3. The First information Report was instituted on the basis of self-statement of Sanoj Kumar Choudhary, the officer incharge of Balumath P.S. wherein it has been stated that on 3.12.2018, an information was received that operatives of extremist group-PLFI have assembled in a jungle and were planning to commit an offence. After making a station diary entry and after informing the superior police officials, a raid was conducted in the jungle and on chase four persons including the appellant were apprehended. On a search conducted, a rifle with magazine and several cartridges were found from the possession of Gulab Yadav, a rifle and magazine with several cartridges were recovered from the possession of Ravi Yadav, from the possession of Pawan Kumar Yadav, fifteen pieces of 5.56 MM cartridges and mobile phones were recovered while from the possession of the appellant, fourteen pieces of 5.56 MM live cartridges and mobile phones were recovered.

4. Bases on the aforesaid allegations, Balumath P.S. Case No. 225 of 2018 was instituted against the appellant and others for the offences punishable under Sections 25(1-A)/26(2)/35 of the Arms Act, Section 17 (i) (ii) of the Criminal Law Amendment Act and Section 10/13 of the Unlawful Activities (Prevention) Act.

5. The Central Government in exercise of powers conferred under Sub Section (5) of Section 6 read with section 8 of the National Investigation Agency

Act, 2008 vide MHA, New Delhi, CTCR Division Order No. 11011/30/2019/IS-IV dated 24.06.2019 directed the NIA to take up investigation of the case and accordingly Balumath P.S. Case No. 225 of 2018 was re-registered as NIA Case No. RC/13/2019/NIA/DLI under section 25(1-A)/26(2)/35 of the Arms Act, Section 17 (i) (ii) of the Criminal Law Amendment Act and Section 10/13 of the Unlawful Activities (Prevention) Act, 1967.

6. A supplementary chargesheet was submitted by the NIA against seven accused persons including the present appellant who has been arrayed as A-3 and the added sections are sections 120 B read with Sections 384, 385, 386, 387 IPC, Sections 17, 18 B, 20 and 23 of the UAP Act, Section 25(1-A), 26 and 29 of the Arms Act and Section 17 of CLA Act.

7. It has been submitted by Mr. A.K. Chaturvedy, learned counsel appearing for the appellant, that mere possession of cartridges have snowballed into a major offence once the NIA has come into the picture. It has been submitted that initially when the case was instituted, the same was under sections 10 and 13 of U.A.P. Act and the same excluded the applicability of Chapter IV and VI of the UAP Act in order to establish a prima facie case as envisaged under sections 43 (D)(5) of UAP Act. Even otherwise, according to Mr. Chaturvedy, the offences alleged against the appellant do not make out a prima facie case. The appellant is in custody since 4.12.2018 and there being no chance of the trial being concluded in the near future, he deserves to be released on bail.

8. Mr. Amit Kumar Das, learned Special P.P. NIA has opposed the prayer for bail of the appellant and while referring to the supplementary charge sheet has submitted that the appellant, who was an active member of the terrorist organization used to carry the weapons for extortion of levy from the contractors of the area who were engaged in construction works. He has further submitted that the appellant has criminal antecedents. The appellant was involved along with the other members of the terrorist organization for collection of levy and using the same to commit terrorist acts. It has been submitted that six witnesses have already been examined and though the chargesheet indicates the presence of 83 witnesses but the NIA will not examine all the witnesses.

9. We have heard the learned counsel for the respective sides and have also perused the various affidavits on record.

10. The initial offence alleged against the appellant was with respect to the recovery of 14 5.56 MM cartridges, a Mobile Phone and pamphlets of an extremist organization. However, when the NIA took over investigation, skeletons came tumbling out from the cupboard and a somewhat common offence took the shape of a serious wrong doing which infact brought into the forefront the operational aspects of the terrorist organization and the role played by the

appellant. The modus operandi of the terrorist organization-PLFI can be understood from the findings, which have been recorded in the supplementary chargesheet, which is as under:-

“17.4....In August 2018, Gulab Kumar Yadav (A-1) Ravi Yadav @ Amit Ji @ Ravi Kumar Yadav @ Rabi Yadav (A-2), Rakesh Kumar Paswan @ Aryan Ji (A-3) and Pawan Kumar Yadav (A-4) joined PLFI through the then Sub Zonal Commander of Latehar and Chatra, Santosh Yadav @ Tiger (A-5) for extortion. It is pertinent to mention here that Gulab Kumar Yadav (A-1), Ravi Yadav @ Amit Ji @ Ravi Kumar Yadav @ Rabi Yadav (A-2), had also been the members of CPI (Maoist) from 2014 to 2016 and worked under the leadership of Pramjeet Mochi @ Sonu Mochi @ Sonu(A-7). But in 2016, they left CPI (Maoist) as they were not able to earn enough money. In 2016 itself, Pramjeet Mochi @ Sonu Mochi @ Sonu(A-7) also left CPI (Maoist) with 6-8 foreign made weapons of CPI(Maoist) and constituted his own nexalite organization i.e. “Maowadi-2”. In August, 2018, Gulab Kumar Yadav (A-1) received two foreign made (HK33 rifle and COLT AR15 rifle) weapons and ammunition from Pramjeet Mochi @ Sonu Mochi @ Sonu(A-7) through Suresh Yadav @ Sirisih Yadav (A-6). These weapons were used by Gulab Kumar Yadav (A-1), Ravi Yadav @ Amit Ji @Ravi Kumar Yadav @ Rabi Yadav(A-2), Rakesh Kumar Paswan @ Aryan Ji (A-3) and Pawan Kumar Yadav (A-4) on joining PLFI in Balumath Area. On joining PLFI, accused A-1, A-2, A-3 and A-4, on the directions of A-5, carried out various militant activities to spread fear in the mind of general public and contractors for extortion of levy. On 8th August, 2018, A-2 along with A-5 and A-1 fired at Jharkhand Police at Lawalong Main Chowk to spread panic among public and police. In September, 2018, A-2 on the directions of A-5, asked Muzamil Mia @ Mujahid Mia, resident of village Murpa Pinderkom, Thana Balumath District-Latehar, for paying the levy of Rs.50,000 but due to refusal of payment of levy by Muzamil Mia, A-2 and his team including A-1, A-3 and A burnt 02 of his payloaders. Later on, in October-November 2018, A-2 and his team asked for paying levy of Rs.1 Lakh, by calling one Santosh Yadav contractor, who had undertaken the construction work of the bridge between Lebrahi and Indua, village Lebrahi, Police Station Balumath, District-Latehar. As the contractor refused to pay levy, A-5 directed A-2, on 22 November 2018 to attack his construction site. Subsequent to this A-1, A-2, A-3 and A-4 attacked the construction site”.

11. The statement of protected witness no. 1 under section 164 Cr.P.C. specifies the role played by the appellant and the same reads as under:-

“17.7 Statements of Protected witness (PW) P-1 and P-2 were recorded u/s 164 of Cr.P.C.. In the statement of Protected Witness-1, it is established that accused Santosh Yadav @ Tiger (A-5) had jointed the CPI (Maoist) militant organization in 2003 at the cadre level but in 2007 he left the CPI(Maoist) and joined the PLFI, a terrorist organization. In December, 2018, Gulab Kumar Yadav (A-1), Son of Jugesh Yadav, resident of village Chani, PS Lawalong, Chatra and his other associates of PLFI were arrested by Balumath Police from the Titir Mahua forest area of Balubhang under the jurisdiction of Police Station Balumath and 02 foreign made weapons were seized from their possession. Once, Rajesh Yadav @ Kailu Yadav had told him that these weapons were given to Ravi Yadav @ Amit Ji @ Ravi Kumar Yadav @ Rabi Yadav (A-2) and Gulab Kumar Yadav (A-1) by Pramjeet Mochi @ Sonu Mochi @ Sonu (A-7) through Suresh Yadav @ Sirish Yadav (A-6). Rajesh Yadav @ Kailu Yadav further informed him that Suresh Yadav @ Sirish Yadav had given these foreign made weapons to Gulab Kumar Yadav (A-1) in his presence and he had seen the weapons from his own eyes. Suresh Yadav @ Sirish Yadav (A-6) and Pramjeet Mochi @Sonu Mochi@Sonu(A-7) have a very close friendship and Suresh Yadav @ Sirish Yadav (A-6) used to work as informer for Pramjeet Mochi @ Sonu Mochi @ Sonu (A-7).

P-1 further disclosed that Ravi Yadav @ Amit Ji @ Ravi Kumar Yadav @ Rabi Yadav(A-2) and Gulab Kumar Yadav(A-1) had worked for Maoist Pramjeet

Mochi@Sonu Mochi @Sonu(A-7) in CPI(Maoist), a terrorist organisation, from 2014 to 2016 before joining PLFI through Santosh Yadav @ Tiger(A-5) and after sometime they also inducted Pawan Kumar Yadav (A-4), son of Govind Yadav, resident of Heranhopa, Balumath, Latehar and Rakesh Kumar Paswan @ Aryan Ji (A-3), Son of Prakash Paswan, village-Dhada, P.S. Lawalong, District-Chatra in PLFI through Santosh Yadav @ Tiger(A-5). Santosh Yadav @ Tiger(A-5), Gulab Kumar Yadav (A-1), Ravi Yadav @ Amit Ji @ Ravi Kumar Yadav@ Rabi Yadav(A-2), Pawan Kumar Yadav(A-4) and Rakesh Kumar Paswan @ Aryan Ji (A-3) used to carry these weapons with them for extortion of levy from the contractors of the area who were engaged in construction works”.

12. The CDRS of the Mobile Phones of the accused persons further strengthens the findings with respect to the appellant as he seemed to have regularly remained in touch with the other accused persons.

13. At para 17.12 of the supplementary chargesheet, the role and activities of the appellant have been summed up, which reads as follows:-

“17.12 Therefore, as per the averments made hereinabove/ in the pre-paragraphs, it is established that Pawan Kumar Yadav (A-3) has been an active member of the PLFI and worked under the command/directions of accused Santosh Yadav @ Tiger(A-5), Sub Zonal Commander of Latehar & Chatra districts and Ravi Yadav @ Amit Ji @ Ravi Kumar Yadav(A-2), Area Commander of Balumath, Latehar of terrorist gnan/unlawful association, PLFI. He used to carry militant operations along with his associates i.e. accused Ravi Yadav @ Amit Ji @ Ravi Kumar Yadav (A-2), Gulab Kumar Yadav (A-1) and Pawan Kumar Yadav(A-4). He used to facilitate Santosh Yadav @ Tiger(A-5), Sub Zonal Commander of Latehar & Chatra districts of PLFI for collection of levy/extorted amount along with Ravi Yadav @ Amit Ji @ Ravi Kumar Yadav (A-2). He used to carry foreign rifle to spread terror in the mind of contractors for carrying out the unlawful and militant activities of PLFI in Balumath area. He, along with other co-accused-Ravi Yadav @ Amit Ji @ Ravi Kumar Yadav @ Rabi Yadav (A-2), Gulab Kumar Yadav (A-1) & Pawan Kumar Yadav (A-4), carried out various attacks on the sites of contractors and local businessmen for spreading fear and extortion of money.

Therefore, it is established that Rakesh Kumar Paswan @ Aryan Ji (A-3), by becoming member of PLFI, terrorist gang/unlawful association, prescribed by the Government of Jharkhand, assisted in strengthening of PLFI and indulged in criminal conspiracy along with other members namely A-1, A-2, A-4&A-5 with intend to aid the above said terrorist gang wherein he tried to collect funds from illegitimate sources through extortion from the contractors engaged in development projects. Thereby, accused- Rakesh Kumar Paswan @ Aryan Ji (A-3) committed offences under sections (i)120B r/w 384, 386 & 387 of the IPC, 1860, Sections 17, 18B & 20 of the UA(P) Act, 1967, Section 25(1A), 26 & 29 of Arms Act, 1959 and sections 17 of CLA Act, 1908(ii)Sections 18, 20&23 of the UA(P) Act, 1967, in the present supplementary charge sheet, the additional offences established against the accused will be added”.

14. What can be culled out from the above is that the appellant was actively involved with the terrorist organization-PLFI and was instrumental in collection of funds through illegitimate sources and he was also involved in carrying out terror operations along with his associates. The statement of protected witness No. 1 under section 164 Cr.P.C. is a pointer to that respect. The acts of the appellant certainly makes out a prima facie case for denial of bail to him.

15. We are conscious of the fact that the appellant is in custody since 4.12.2018 but regard being had to the above finding coupled with the fact that

the trial is progressing, we are not inclined to interfere in the impugned order dated 16.2.2022, passed by Shri Madhuresh Kumar Verma, learned Additional Judicial Commissioner-XVI cum Special Judge, NIA, Ranchi in Misc. Cri. Application No. 125 of 2022 and this appeal is therefore dismissed with a direction to the learned trial court to expedite the trial and conclude the same preferably within a period of one year from today.

16. The appellant is at liberty to renew his prayer for bail if the trial is not concluded within the aforesaid period.

17. This appeal stands dismissed with the aforementioned observations.

(Rongon Mukhopadhyay, J)

(Ambuj Nath,J)

Rakesh/-