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105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1044-2023 (O&M)
DATE OF DECISION: 09.01.2025

SANDEEP SINGH @ SHELLY

.....APPELLANT

Vs.

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Randeep Singh Waraich (Rana), Advocate,
for the applicant-appellant.

Mr. Amit Kumar Goyal, Addl. A.G., Punjab.

DEPAK SIBAL, J. (ORAL)

1. Through the instant appeal, the applicant-appellant assails the order dated 01.08.2023, passed by the Judge, Special Court, Ludhiana, whereby his application seeking therein regular bail in FIR No. 192, dated 05.12.2022, registered under Section 25 of the Arms Act, 1959 [offences under Sections 386, 384, 506 and 473 IPC read with Section 120-B thereof and Sections 17, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967, (for short '*the UAPA Act*') were added later on], at Police Station City Khanna, District Ludhiana, has been dismissed.



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2. As per the version of the prosecution, on 05.12.2022, on the basis of suspicion, Mohinder Verma alias D.K. and Ramesh, co-accused of the appellant, were apprehended by a police party headed by ASI Harwinder Singh. Personal search of the said persons led to the recovery of a country made .32 Bore pistol along with 8 live rounds from Mohinder Verma alias D.K. and a country made .315 Bore pistol along with 2 live cartridges .315 bore from Ramesh.

2.1 During investigation, on the basis of statements made by the aforesaid persons, the present appellant Sandeep Singh alias Shelly and one Gurjant Singh alias Janty, were also nominated as co-accused. They were then arrested and recoveries of 10 live bullets were made from each of them.

3. Learned counsel for the appellant submits that the appellant has no other criminal antecedents; both the appellant-Sandeep Singh @ Shelly and one Gurjant Singh @ Janty have been nominated as accused on the basis of the alleged disclosure statement made by their co-accused, who is alleged to have indulged in anti-national activities and from whom objectionable letter pads had also been recovered; however, no other incriminating material except ten live cartridges of caliber 0.9mm have been recovered from the appellant and co-accused Gurjant Singh @ Janty; there is no evidence collected by the prosecution linking the appellant and/or co-accused Gurjant Singh @ Janty to the other 14 co-accused in the FIR in question; vide order dated 16.12.2024 passed by a co-ordinate



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Bench of this Court in CRA-D-1212-2023 titled Gurjant Singh @ Janty vs. State of Punjab, the identically placed co-accused Gurjant Singh @ Janty has been granted regular bail; the appellant has already undergone 02 years and 19 days of actual custody; even after two years, the appellant's trial has not begun as charges have not even been framed; the appellant's trial, if any, is likely to take long time to conclude as in the same the prosecution intends to produce as many as 62 witnesses and that the case of the appellant is also fully covered in his favour in terms of the law laid down by the Hon'ble Supreme Court in Union of India vs. K.A. Najeeb (2021) 3 SCC 713, Shoma Kanti Sen vs. State of Maharashtra and another 2024 SCC Online SC 498 and Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh (2024) 8 SCC 293.

4. The State counsel has fairly confirmed that there is no recovery of any incriminating material from the appellant as has been recovered from co-accused Harsimranjeet Singh @ Simma; there are no allegations *inter se* the appellant and other co-accused as alleged by the prosecution against the co-accused Amrit Pal alias Amrit Ball, Daljit Kaur alias Manno, Harsimranjeet Singh and Parveen Singh; the appellant's role is identical to that of Gurjant Singh @ Janty's case (*supra*) and that the aforesaid judgment dated 16.12.2024 passed by a co-ordinate Bench of this Court granting regular bail to Gurjant Singh @ Janty has attained finality as the same has not been challenged by the State.

5. We have considered the contentions raised by the learned counsel for the parties and have also gone through the paper-book carefully.



6. Through judgment dated 16.12.2024 rendered by a co-ordinate Bench, co-accused Gurjant Singh @ Janty has been directed to be released on regular bail. The relevant portion of such judgment reads as follows:-

XXXX XXXX XXXX XXXX

“5. The allegation against the appellant is that he along with co-accused were extorting money from various people and using letter pads of banned organizations. The appellant has been arraigned as an accused on the statement of co-accused and 10 live cartridges of .9 mm are alleged to have been recovered from the appellant. No other incriminating material has been recovered from the appellant. We are conscious of the fact that the conditions for granting bail to an accused under UAPA are stringent. However, at the same time, it is the duty of the Court to carefully scrutinize the material against the appellant. We do not find adequate material against the appellant which would justify his further incarceration. The appellant has been in custody for almost 02 years and is not involved in any other criminal case.

6. Article 21 of the Constitution of India enshrines the fundamental right to protection of life and liberty which also includes the right to speedy trial, which is sacrosanct. It has been held by the Supreme Court in a catena of judgments that long custody by itself would entitle the accused under UAPA to the grant of bail by invoking Article 21 of the Constitution of India. In the instant case, none of the 62 prosecution witnesses has been examined and in such a situation, it would be difficult to hazard a guess about the conclusion of the trial. The appellant is in custody for 01 year, 11 months & 26 days. The Constitutional Court would like to prevent a situation where the lengthy and arduous process of trial, becomes a



*punishment in itself. Reference can be made to the judgment of the Supreme Court in the case of **Union of India versus K.A. Najeeb (supra)** wherein it has been held that long custody would be an essential factor while granting bail under UAPA. Article 21 of the Constitution of India provides right to speedy trial and long period of incarceration would be a good ground to grant bail to an under-trial for an offence punishable under UAPA. It has also been held that the embargo under Section 43-D of UAPA would not negate the powers of the Court to give effect to Article 21 of the Constitution of India.”*

.....

“7. In the case of **Shoma Kanti Sen(supra)**, the Supreme Court has held that generally pre-conviction detention at the investigation stage is necessary to maintain purity in the course of trial and also to prevent an accused from being a fugitive from justice or to prevent further commission of an offence. Once it is apparent that a timely trial is not possible and the accused has suffered incarceration for a significant period of time, the Court would ordinarily be obligated to enlarge them on bail as any form of deprivation of liberty must be proportionate to the facts of the case and also follow a just and fair procedure. A balance must be made between the prosecution’s right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously, the respondent’s rights guaranteed under Part-III of the Constitution.”

.....

“8. The Supreme Court in the case of **Vernon versus The State of Maharashtra and another(supra)** has held that serious allegations against accused by itself cannot be a reason to deny bail to the accused.”

.....

“9. In the case of **Sheikh Javed Iqbal @ Ashfaq Ansari**



@ Javed Ansari versus State of Uttar Pradesh(supra), it has been held that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A Constitutional Court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law, of which liberty is an intrinsic part.”

.....

*“10. In the case of **Javed Gulam Nabi Shaikh versus State of Maharashtra, another(supra)**, the Supreme Court has observed that criminals are not born out but made. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India. Moreover, the purpose of bail is only to secure the attendance of the accused at the trial and bail is not to be withheld as a form of punishment”.*

.....

“11. In view of the above especially when the appellant is in custody for almost 02 years and is not involved in any other criminal case and the end of the trial is not in sight as charges are yet to be framed and 62 prosecution witnesses are to be examined, the appeal is allowed and the impugned order is set aside. The appellant is ordered to be released on regular bail subject to following conditions besides furnishing of requisite bail bonds to the satisfaction of the trial Court/Duty Magistrate concerned:-

- (i) He shall furnish bond of ₹1 lakh with two sureties of ₹1 lakh each;*
- (ii) He shall surrender his passport, if any, in the Trial*



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Court, if he is holding the same and is still with them;

(iii) He shall appear before Trial Court on each and every date unless exempted by Court;

(iv) He shall appear before the Investigating Officer as and when summoned;

v) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or who is cited as witness;

vi) He shall not involve in any criminal activity and if during the pendency of trial, he is found involved in commission of any offence punishable under UAPA, the prosecuting agency would be free to approach this court for recalling this order and cancellation of his bail;

vii) He shall not sell, transfer or in any other manner create third party right over his immovable property;

viii) He shall furnish an undertaking to the effect that in case of their absence, Trial Court may proceed with trial and he shall not claim re-examination of any witness.

ix) At the time of release of the appellant, the concerned SHO, shall be informed. He shall appear before the SHO on every alternate Monday till the conclusion of the trial.

12. In the event there is a breach of any of the abovementioned conditions, or of the conditions to be imposed by the Trial Court independently, it would be open to the prosecution to seek cancellation of the bail of the defaulting appellant without any further reference to this Court. Similarly, if the appellant seeks to threaten or otherwise influence any of the witnesses, whether directly or indirectly, then also the prosecution shall be at liberty to seek cancellation of bail of the concerned appellant by making appropriate application before the Trial Court.

13. Needless to mention that the observations made



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hereinabove are only for the determination of appeal seeking bail and shall have no bearing on the merits of the trial.”

7. It is not disputed before us that like co-accused Gurjant Singh, except 10 live cartridges of caliber .9mm, no recovery of any weapon or any other incriminating material has been effected from the appellant. There are also no allegations against the appellant of having received any finances either from any international source or from any other co-accused.

8. In the light of the afore stand taken by learned counsel for the parties, we find that on the ground of parity with his co-accused Gurjant Singh @ Janty, the appellant is entitled to be released on regular bail, especially, when the period of custody of the appellant is more than that of Gurjant Singh @ Janty; the judgment of the co-ordinate Bench in Gurjant Singh's case (*supra*) has attained finality as the State has not challenged the same; the appellant is not involved in any other criminal case and that even after the passage of two years, the appellant's trial is yet to begin as till date no charges have even been framed as also for the reason that in case the appellant is put to trial, the same is likely to take time to conclude as in the same, the prosecution intends to produce as many as 62 witnesses.

9. Consequently, the present appeal is allowed. The impugned order dated 01.08.2023, passed by learned Judge, Special Court, Ludhiana, is set aside. The appellant is ordered to be released on regular bail subject to the following conditions to the satisfaction of the learned trial Court/Duty Magistrate concerned:-

- i. He shall furnish bond of ₹1,00,000/- with two sureties of



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₹1,00,000/- lakh each;

- ii. He shall surrender his passport, if any, in the Trial Court;
 - iii. He shall appear before Trial Court on each and every date unless specifically exempted by the Trial Court;
 - iv. He shall appear before the Investigating Officer as and when summoned;
 - v. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or who is cited as a witness;
 - vi. He shall not participate in any criminal activity and if during the pendency of the trial, he is found involved in the commission of any offence, the prosecuting agency would be free to approach this Court for cancellation of his bail;
 - vii. He shall not sell, transfer or in any other manner create third party right over his immovable property;
 - viii. He shall furnish an undertaking to the effect that in case of his absence, the Trial Court may proceed with the trial and he shall not claim re-examination of any witness.
 - ix. At the time of release of the appellant, the concerned SHO, shall be informed. He shall mark his presence before the SHO on every alternate Monday till the conclusion of the trial.
10. In the event if there is a breach of any of the abovementioned conditions or of any additional conditions to be imposed by the Trial Court, it would be open to the prosecution to seek cancellation of the bail of the



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defaulting appellant. Similarly, if the appellant seeks to threaten or otherwise influence any of the witnesses, whether directly or indirectly, then also the prosecution shall be at liberty to seek cancellation of bail of the appellant through filing of an appropriate application.

11. Needless to mention that the observations made hereinabove are only for deciding the appeal seeking bail and shall have no bearing on the merits of the trial.

12. Pending miscellaneous application (s), if any, shall also stand disposed of.

(DEEPAK SIBAL)
JUDGE

JANUARY 09, 2025
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes/No
Whether Reportable	Yes/No