

High Court of Punjab-Haryana
CRA-D No.454 of 2021 (O&M)
Date of Decision: 09.11.2023

Gursewak Singh

... Appellant

Versus

State of Punjab

... Respondent

Headnotes

Criminal Appeal – Regular Bail Application Dismissal

Gursewak Singh appealed against the dismissal of his regular bail application under Section 439 of Cr.P.C. by the Special Judge, Amritsar. [Para 1, 4]

Prosecution Sanction Under UAP Act

Concerns were raised about the prosecution under the UAP Act due to the absence of pre-requisite sanction from the competent authority at the time of the presentation of the challan. [Para 8]

Specific Role Attribution and Evidence

The prosecution failed to attribute a specific role to the appellant in the commission of offences under the UAP Act and other IPC sections, lacking material evidence against him. [Para 9, 10]

4. Bail Grant Considerations

The appeal was allowed considering the appellant's lengthy custody and the slow pace of the trial, with directions for bail upon furnishing a bond and regular reporting to the local police station. [Para 11]

5. Decision Without Prejudice to Trial Merits

The High Court set aside the Special Court's order, granting regular bail to the appellant, clarifying that the observations made were solely for bail purposes. [Para 12, 13]

Referred Cases with Citations

- Harpal Singh v. State of Punjab, 2008 (1) RCR (Criminal) 224
- C.B.I. v. Ashok Kumar Aggarwal, (2014) 14 SCC 295
- Satish Kumar v. State of Punjab, 2021 (3) RCR (Criminal) 115
- Roopesh v. State of Kerala, (2019) 4 ILR Kerala 267
- Vernon v. The State of Maharashtra and another, 2023 (4) R.C.R. (Criminal) 47

Representing Advocates

- For the Appellant: Mr. Rajiv Malhotra, Advocate
 - For the Respondent: Mr. Alankar Narula, AAG, Punjab
- MANISHA BATRA,**

J.

1. The instant appeal has been preferred against order dated 22.02.2021 passed by learned Special Judge, Amritsar in case bearing FIR No.04 registered on 15.03.2020 under Sections 379-B, 382, 399, 402, 411, 467, 468, 472, 473 IPC, Sections 15, 16, 17, 18, 18B of Unlawful Activities (Prevention) Act, 1967 (For short "UAP Act"), Section 25 sub sections 6, 7 and 8 of Arms Act and Section 52/54 of Prisons Act, at Police Station SSOC, Amritsar whereby the bail application filed by the present appellant for grant of regular bail under Section 439 of Cr.P.C., had been dismissed.
2. The brief facts of the case relevant for the purpose of disposal of this appeal are that the aforementioned FIR was registered on the basis of a secret information received by DSP Harminder Singh, Police Station, Organized Crime Control Unit (For short "OCCU") 1 of 8 Neutral Citation No:=2023:PHHC:143731-DB Neutral Citation: 2023:PHHC:143731-DB Amritsar on 15.03.2020 to the effect that the accused Sikander Singh who was having criminal antecedents and was wanted in many cases, had formed a gang with co-accused Amritpal Singh Bhullar, Manoj Thakur alias Kaka Pehalwan, the present appellant Gursewak Singh and some other persons who were also having criminal antecedents and were wanted in cases of murder, attempt to murder, robberies, extortion and theft etc. As per the information, all these accused were having with them dangerous weapons and ammunitions. They were having relations with enemy country Pakistan through mobile phones, wireless sets and other technological instruments and were hatching plans to commit some terrorist acts in different places in the country thereby trying to disturb the peace of the country and further that they were trying to get released from police custody, the accused Gagandeep Singh and Pardeep Singh. On the basis of this information, a case was registered and investigation proceedings were initiated. On the same day, the accused Manoj Thakur @ Kaka Pehalwan and Sikander Singh were arrested. Several arms and ammunitions were recovered from them. Co-accused Amritpal was arrested on 17.03.2020. On interrogation, he suffered disclosure statement to the effect that he along with the present appellant and other accused had robbed 30 kg of gold from IIFL Gold Loan Branch, Gill Road, Ludhiana. The co-accused Gagandeep Singh and Pardeep Singh were arrested and recoveries of arms and ammunitions were effected from them.
3. The appellant-accused Gursewak Singh who was already in custody in a case registered at Police Station Mohali was joined into the investigation of this case and arrested on 05.07.2020. A .32 bore pistol and some cartridges were already got recovered by him in a case registered at Police Station Mohali. After completion of necessary investigation and usual 2 of 8 Neutral Citation No:=2023:PHHC:143731-DB Neutral Citation: 2023:PHHC:143731-DB formalities, challan under Section 173 Cr.P.C. was presented against

the accused. Subsequently, supplementary challn under Section 173 (8) of Cr.P.C. was presented before the Special Court after obtaining sanction for prosecution of the accused persons from competent authority. The present appellant moved an application for regular bail before learned Special Court which was dismissed vide order dated 22.02.2021. It is important to mention here that the present appellant had filed appeal against order dated 22.02.2021 as well as against the order passed by learned Special Court thereby dismissing his request for grant of default bail under Section 167 (2) Cr.P.C. before a Coordinate Bench of this Court. Vide order dated 26.04.2022, the said appeal had been dismissed. The appellant had filed petition for Special Leave to Appeal (Criminal) No.10755 of 2022 before Hon'ble the Supreme Court challenging the order of the Coordinate Bench and Hon'ble the Supreme Court had set aside the abovesaid order on 22.03.2023 and remanded the matter to this Court with a direction to decide this appeal on its own merits and that is how this appeal has been restored and has come up before us.

4. Learned counsel for the appellant submitted that he was in custody since 05.07.2020 for a period of about three and half years. Investigation has been completed. Challan has been presented in the Court and only 1 witness has been examined so far. He argued that the entire prosecution in this case was carried out without obtaining any prior sanction from the competent authority. No recovery was effected from the appellant in this case and recovery of one pistol and four live cartridges was falsely planted upon the appellant in a case registered at Police Station Mohali which did not amount to commission of act of any terrorist activity as 3 of 8 Neutral Citation No:=2023:PHHC:143731-DB Neutral Citation: 2023:PHHC:143731-DB defined by the provisions of UAP Act. He was arrested on the basis of mere suspicion. The contents of the challan report clearly revealed that the appellant had no role to play for commission of offences punishable under Sections 411, 467, 468, 472 and 473 of IPC, 16 of UAP Act, Section 52/54 of Prisons Act and Section 25 of Arms Act. No specific part whatsoever had been attributed to him qua commission of these offences.

The learned Additional Sessions Judge presiding over the Special Court had passed a non-speaking order while dismissing his bail application as no cogent reason had been given. The offences under Sections 15 to 18 and 18B of UAP Act were added by the Investigating Agency without any evidence and without obtaining pre-requisite permission. He further argued that there was nothing on record to connect the appellant with the offences for which he had been booked and charge-sheeted and, with these broad arguments, it was submitted that the impugned order dated 22.02.2021 as passed by learned Special Court, Amritsar was liable to be set aside, the appellant deserved to be given concession of regular bail and that the appeal deserved to be accepted. To fortify his argument, learned counsel for

the appellant placed reliance upon authorities cited as Harpal Singh v. State of Punjab, 2008 (1) RCR (Criminal) 224; C.B.I. v. Ashok Kumar Aggarwal, (2014) 14 SCC 295; Satish Kumar v. State of Punjab, 2021 (3) RCR (Criminal) 115 and Roopesh v. State of Kerala, (2019) 4 ILR Kerala 267.

5. The respondent has filed an affidavit through Sh. Balbir Singh PPS, DSP, OCCU, Amritsar resisting the pleas as taken in the appeal and by alleging that the appellant was arrested in a case bearing FIR No.04 dated 12.03.2020 at Police Station, SSOC, SAS Nagar, Mohali and had got recovered one revolver .32 bore along with 10 live cartridges. He was joined 4 of 8 Neutral Citation No:=2023:PHHC:143731-DB Neutral Citation: 2023:PHHC:143731-DB into the investigation of this case and had suffered a disclosure statement on interrogation to the effect that the abovesaid revolver was given to him by the accused Gagandeep and the same was used by him in committing dacoity in IIFL Gold Loan Branch, Ludhiana on 17.02.2020 and further disclosed that they had hatched a plan to attack at Police Station SSOC Amritsar in order to release their associate Gagandeep Singh alias Gagan Judge. It was alleged that the appellant and co-accused Gagandeep were accomplices in several crimes since long and had committed several crimes. They had relations with anti national elements abroad and were committing unlawful activities. It was submitted that the sanction for prosecution of the appellant and other accused had been sought by the Investigating Agency on 28.07.2020 and it was granted by the competent authority vide letter dated 31.03.2021 and a supplementary charge sheet under Section 173 (8) of Cr.P.C. along with sanction was submitted before the Special Court on 20.04.2021. It was further submitted that there were serious allegations against the appellant and, therefore, it was stressed that he did not deserve to be given concession of bail and that the appeal was not maintainable.
6. We have heard learned counsel for the appellant and learned State counsel for the respondent at length and have gone through the record carefully.
7. As per the prosecution version, the accused Sikander Singh and Manoj Thakur alias Kaka Pehalwan who were alleged to have formed a gang with the appellant and other co-accused, had been arrested on 15.03.2020 by the police on the basis of a secret information and recovery of arms and ammunitions, wireless sets etc. had been effected from them. During investigation, the accused Amritpal Singh Bhullar was alleged to 5 of 8 Neutral Citation No:=2023:PHHC:143731-DB Neutral Citation: 2023:PHHC:143731-DB have disclosed that he along with his accomplices had robbed gold from IIFL Gold Finance Company Ludhiana. The present appellant is alleged to have been arrested in a case registered at Police Station Mohali on 24.06.2020 and was arrested in this case on

05.07.2020. No recovery was effected from him in this case. The appellant along with the others has been charge-sheeted for commission of offences for which he has been booked.

8. The appellant along with other accused in this case has been booked and charge-sheeted for commission of offences punishable under Sections 16, 17, 18, 18B of UAP Act read with Sections 379-B, 411, 399, 402 and 473 of IPC, Section 25 of Arms Act and Section 52/54 of Prisons Act. The offences under the provisions of UAP Act qua which charges have been framed against him are covered under Chapter IV of the UAP Act. As per Section 45 of this Act, no Court shall take cognizance of any offence falling under Chapter IV without previous sanction of the Central Government or as the case may be, the State Government. Admittedly, the sanction for prosecution of the appellant and co-accused in this case had not been granted by the competent authority till the date of presentation of the challan and it was accorded later and then the said sanction is shown to have been filed in the Court along with supplementary challan report. It is, therefore, debatable as to whether the Court was even competent to take cognizance of the offences punishable under Sections Sections 16, 17, 18 and 18B of UAP Act till the date when sanction was granted under Section 45 of UAP Act.
9. Further, the appellant is shown to have been booked and charge-sheeted for commission of offences punishable under different provisions of UAP Act on the basis of investigation and disclosure statements stated to be 6 of 8 Neutral Citation No:=2023:PHHC:143731-DB Neutral Citation: 2023:PHHC:143731-DB suffered by the co-accused and it is the case of the prosecution that during interrogation, the co-accused Amritpal Singh Bhullar had disclosed that the appellant, co-accused and himself were operating a gang that was involved in anti national activities. From the contents of the challan report and other accompanying documents, no specific role is shown to have been attributed by the prosecution to the appellant in the activities which have allegedly amounted to commission of offences punishable under Sections 16, 17, 18 and 18B of UAP Act and this position could not be rebutted even by learned State counsel while rendering arguments. No material has been brought forward by the prosecution to show the connection of the present appellant with the foreign contacts with which he along with co-accused is alleged to be involved in promoting the anti national activities.
10. Further, from a perusal of the material placed on record, no specific and active role is shown to have been attributed to the present appellant qua commission of offences punishable under the provisions of IPC and Arms Act (for which he has been charge-sheeted). He is in custody w.e.f. 05.07.2020. Only 1 out of 38 witnesses have been examined so far. No recovery whatsoever had been effected from the appellant in

this case and one revolver and ten live cartridges were allegedly recovered from him in another case which was registered prior to this case at Police Station Mohali. On the basis of allegations as levelled against the appellant, prima facie no case can be stated to have been made out to presume that there had been any conspiracy between the appellant and the co-accused to form membership of a terrorist gang and to commit acts against the interest of the nation. The statute of UAP Act has stringent provisions but that makes the duty of the Court to be more onerous and it is well settled that merely because 7 of 8 Neutral Citation No:=2023:PHHC:143731-DB Neutral Citation: 2023:PHHC:143731-DB allegations were serious, on that reason alone, bail cannot be denied. Reference in this regard can be made to recent pronouncement of Hon'ble Supreme Court in Vernon v. The State of Maharashtra and another, 2023 (4) R.C.R. (Criminal) 47, wherein similar observations were made.

11. Keeping in view the fact that the appellant is in custody for a period of about three and half years, that the trial is likely to take time and the entire attendant circumstances of the case, in our opinion, the appeal deserves to be allowed. The same is accordingly allowed. The impugned order dated 22.02.2021 as passed by learned Special Court is set aside and it is ordered that the appellant be produced before the learned Special Court within ten days from today to enable him to seek bail by furnishing personal as well as surety bond to the satisfaction of the learned Special Court. It is further directed that the appellant shall report to the Local Police Station after every fortnight before the concerned SHO to ensure that his whereabouts are ascertainable.
12. It is, however, made clear that the observations made above will have no bearing on the merits of the case and are only relevant for the purpose of granting regular bail to the appellant.
13. All the pending criminal miscellaneous application(s), if any, automatically stand disposed of.

(© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.