

HIGH COURT OF PUNJAB AND HARYANA**Bench: JUSTICE ANUPINDER SINGH GREWAL****MS. JUSTICE KIRTI SINGH****Date of Decision: November 30, 2023****CRA-D-1111-2023**

Nirmal Singh alias Nimma

... Appellant

Versus

State of Punjab

... Respondent

Legislation:

Sections 25(6), 25(7) of the Arms Act

Sections 10, 13, 18, and 20 of Unlawful Activities (Prevention) Act, 1967 (UAPA Act)

Sections 3, 4, 5, and 6 of the Explosive Substances Act, 1908

Section 439 of the Criminal Procedure Code (Cr.P.C)

Subject:

Bail Application - Appellant challenges the order of Additional Sessions Judge, Moga, denying bail under various sections of Arms Act, Unlawful Activities (Prevention) Act, and Explosive Substances Act. - Appellant has been in custody for over a year. - grants the appellant regular bail, setting aside the impugned order.

Headnotes:

Bail Application - Lack of Prima Facie Material and Absence of Criminal Antecedents - Appellant Nirmal Singh alias Nimma challenges the denial of bail by Additional Sessions Judge, Moga under the Arms Act, UAPA, and Explosive Substances Act - Main contention includes lack of prima facie material connecting him to the offenses and absence of criminal history - Co-accused granted bail earlier - No substantial evidence found linking the appellant to the alleged crimes - Consideration of stringent UAPA provisions - Appellant in custody for over a year - Court concludes no reasonable grounds to believe the accusations against appellant are prima facie true - Regular bail granted, setting aside the impugned order. [Para 1-13]

Observations on Material Evidence and Accusations - Examination of material on record and police challan reveals insufficient evidence against the appellant - Reliance primarily on co-accused's statement with no corroborating recovery or call detail records linking appellant to the crime - Appellant not involved in other criminal activities prior to this case - Court's careful scrutiny under UAPA provisions indicates no prima facie

truth in accusations - Bail granted considering the lack of reasonable grounds for belief in accusations. [Para 6-11]

Court's Decision - High Court sets aside the order of Additional Sessions Judge, Moga - Appellant granted regular bail with necessary bond conditions. [Para 11-13]

Referred Cases: None

Representing Advocates:

Mr. Balbir Kumar Saini, Advocate and Mr. Vikas Malik, Advocate for the appellant.

Mr. Harmandeep Singh Sullar, Sr. DAG, Punjab, for the respondent.

ANUPINDER SINGH GREWAL , J.(Oral)

The appellant has challenged the order dated 25.7.2023 passed by the Additional Sessions Judge, Moga dismissing his bail application under Section 439 Cr.P.C. in FIR No. 222 dated 4.1.2022 under Sections 25(6), 25(7) of the Arms Act, under Sections 10, 13, 18 and 20 of Unlawful Activities (Prevention) Act, 1967(for short 'the UAPA Act') and Sections 3, 4, 5 and 6 of the Explosive Substances Act, 1908 registered at P.S. Baghapurana.

2. Learned counsel for the appellant submits that there is no *prima facie* material which would connect the appellant with the commission of offence except the statement made by the co-accused Lovepreet Singh. There is no discovery of any fact or any article in pursuance to the disclosure statement. He further submits that he did not have any criminal antecedents before his involvement in the instant case and after his arrest in this case, he has been involved in another FIR which was registered 03 days prior to the registration of the instant case i.e. FIR No. 81 dated 28.09.2022 under Section 25 of the Arms Act and Sections 13, 15, 16 and 18 of the UAPA Act registered at P.S. Arif Ke. Learned counsel for the appellant submits that the co-accused- Sukhpreet Kaur has already been granted the benefit of regular bail by this Court in **CRM19001-2023** in **CRA-D-542-2023**.
3. Learned State Counsel while referring to the reply filed by the Deputy Superintendent of Police, Baghapurana, District Moga submits that it was disclosed by co-accused-Lovepreet Singh that the appellant was also with them on his Activa vehicle bearing Registration No. PB-03-BH4313. He was plying the Activa of co-accused Lovepreet Singh so that in case there is barricading, the appellant will inform them. He further submits that after completion of the investigation, challan qua the appellant and other accused

had been filed on 1.4.2023, charges had been framed on 20.10.2023 and now the case is fixed for prosecution evidence. He also submits that in view of the serious allegations, the appellant is not entitled to the benefit of regular bail.

4. Heard.

5. The allegations against the appellant and other co-accused are that they had been receiving arms, ammunition and explosive substances from across the border and had been using the same to indulge in anti-national activities including spreading terror etc. The appellant has been arraigned as an accused on the statement of co-accused-Lovepreet Singh that he was traveling on a scooter ahead of the other co-accused to alert them about any barricading by the police.

6. We have perused the material on record including the challan filed by the police. The reference to the applicant in the challan is reproduced hereunder :-

'On the disclosure statement of the abovesaid accused Lovepreet Singh alias Labi, Nirmal Singh alias Nimma, son of Joginder Singh son of Chhota Singh resident of Patti Hardita village Deon, District Bathinda was nominated as accused in the present case vide rapat No. 28 dated 11.1.2022.'

7. The relevant extract from the affidavit filed by the respondents pertaining to the role of the appellant is reproduced below :-

'At that time the petitioner Nirmal Singh @ Nimma was also with them and he was on his Activa vehicle No. PB-03BH-4313. Petitioner was plying to Activa vehicle ahead to the vehicle of Lovepreet Singh etc. so that in case of any barricading, petitioner will provide information to them.' 8. In response to the query of this Court as to whether any recovery had been effected from the appellant, learned counsel for the appellant submits that as per the affidavit filed by the DSP, there does not seem to be any recovery effected from the appellant.

9. It is thus manifest that besides the statement of the co-accused wherein he has stated that the appellant was also traveling ahead of them, there does not seem to be any material to connect the appellant with the commission of the offence. There is no recovery from the appellant and nothing to indicate that as per call locations or call details, the appellant was in touch with the co-accused in close proximity to the commission of the offence or their arrest as they are stated to have been apprehended along with arms and ammunition.

10. We are conscious of the fact that under the provisions of the UAPA Act, bail can be granted if the Court is of the opinion that there are no reasonable grounds to believe that the accusations against the accused are *prima facie* true. The provisions of the UAPA Act are stringent and therefore, at the same time, it is necessary for the Court to carefully scrutinize the material in reference to the accusation against the accused. In the instant case, besides the statement of the co-accused that the appellant was also traveling ahead of them on his vehicle, there does not seem to be any other material at this stage which would connect the appellant with the commission of the offence. The appellant prior to his involvement in the instant case was not involved in any other criminal case. He has been in custody for a period of more than 1 year and 1 month.
11. We, therefore, have no hesitation to hold that there are no reasonable grounds for believing that the accusation against the appellant is *prima facie* true. We, therefore, deem it appropriate to allow the appeal and grant the concession of regular bail. The impugned order dated 25.7.2023 passed by the Additional Sessions Judge, Moga is set aside. The appellant is ordered to be released on regular bail on furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate concerned.
12. However, it is clarified that the observations made hereinabove would not have any bearing on the merits of the case.
13. Pending application (s), if any, stands disposed of.

© All Rights Reserved @ LAWYER E NEWS

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