

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-679-2022

Reserved on : 08.12.2022

Pronounced on :13.12.2022

Jasbir Singh

....Appellant

Versus

State of Punjab

.... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr.Arnab Sood, Advocate for the appellant.

Mr.Arjun Sheoran, DAG, Punjab.

G.S. Sandhawalia, J.

Present appeal under Section 21 of the National Investigation Agency Act, 2008 has been filed against the order of the Special Court comprising of the Additional Sessions Judge, Amritsar dated 28.07.2022. The said Court dismissed the third bail application in FIR No.116 dated 06.06.2020 (Annexure A-1) under Sections 295, 295A, 120, 120-B, 121-A and 153-A of Indian Penal Code (for short 'IPC') and Section 13 of the Unlawful Activities (Prevention) Act, 1967 (for short '1967 Act') registered at Police Station Chatiwind, Amritsar, on the ground that the appellant had been arrested on 06.06.2020 and the first bail application had been dismissed as withdrawn on the same date and thereafter the second one had been dismissed on 29.07.2020. It was noticed that the appellant had filed a bail application before this Court bearing CRM-M-23653-2020, which was dismissed by a Single Judge on 16.10.2020 (Annexure A-4), however, while noticing that the appeal was to be heard by the Bench of two Judges of this Court. It was, accordingly, noticed that the challan has been presented and the conclusion of the trial will take

long, but keeping in view the allegations made in the FIR the bail application was dismissed on the ground that there was no fresh reason as such.

We are of the considered opinion that the matter cannot be allowed to rest there, as there is an apparent violation of Article 21 of the Constitution of India and in view of the law laid down by a three Judge Bench of the Apex Court in '**Union of India Vs. K.A. Najeeb**', AIR 2021 3 SC 712, specially keeping in view the leisurely fashion in which the State is choosing to proceed on the prosecution and it, thus, wholly responsible for grant of the benefit to the present appellant.

The FIR (Annexure A-1) was lodged initially under Section 295 IPC by the police official namely SI Sukhraj Singh of the CIA Staff as he had got secret information that the appellant alongwith Avtar Singh were sitting in a room situated at a Cremation Ground under the bridge of the Canal Bhagtupura and holding out that head of people belonging to Hindu community should be chopped off and they will not be allow bells of temple to ring and people of Hindu faith would be expelled from Punjab. The said persons were thereafter apprehended and who had disclosed their identity as the appellant and Avtar Singh. As per the challan filed on 07.06.2020 vide DDR No.23 Sections 120, 120-B, 121-A, 153-A IPC were added and the appellant as such got recovered a mobile phone during the course of the investigation on 08.06.2020 (Annexure A-2) bearing brand name of Samsung bearing SIM No.82888-27494. The same was recovered from the bushes in village Bhagtupura and it was got checked from the Incharge, Social Media Cell, Amritsar and from the chats of the WhatsApp, *Babbar Khalsa* was downloaded in the computer. The SIM number was registered in the name of the appellant who was

resident of Wara Sher Singh, District Tarn Taran. It has further been mentioned in the report under Section 173 Cr.P.C. (Annexure P-5) dated 16.10.2020 that one public witness Baaj Singh had recorded his statement that the appellant alongwith another person who were known to him were discussing about their offensive talk, as noticed during the *Ghallukara Diwas* (Blue Star Anniversary) which was going on. The data had been recovered from the Social Media Cell and it was found that Avtar Singh had created a group by the name of *Babbar Khalsa* and screen shots of said WhatsApp data was obtained and resultantly Section 295-A IPC was added vide DDR No.45 dated 01.09.2020. It was found that his co-accused Avtar Singh and Jasbir Singh were in touch with Baba Mann Singh resident of England on his WhatsApp number and who was further in touch with banned terrorist organization "Sikhs for Justice" and on his asking they were active in the movement of Khalistan Refrendum-2020. On 06.06.2020 both of them had gone to *Darbar Sahib* in support of the said Referendum and Rs.2,000/- was received through Western Union by Avtar Singh on 19.05.2020 and they were trying to join more persons in this movement.

Accordingly, it was mentioned in the report that Organization *Babbar Khalsa* had been announced illegal by the Government and members of the Khalistan Referendum-2020 had been banned, since proof regarding ownership of mobile phones and SIMs recovered from the accused are yet to be proved and sanction was to be obtained under the provisions of 295-A and 153-A IPC and Section 13 of the 1967 Act, thus, supplementary challan was liable to be presented under Section 173 (8) Cr.P.C.

Counsel for the appellant has very tersely summed up the position that the appellant is in custody since last 2 ½ years and no sanction has been taken under Section 196 Cr.P.C. for the offences punishable under Chapter VI or under Section 153A and under Section 295A IPC. It is, accordingly, contended that the offence of conspiracy to commit the offence of waging war under Section 121 is punishable with imprisonment for life, which may extend to 10 years and in the absence of any sanction, the Court cannot take cognizance. It is, thus, submitted that though challan has been filed on 16.10.2020, 2 years back but trial cannot proceed and resultantly the appellant is entitled for bail.

Counsel for the State has admitted that the position as such is correct.

As per the reply filed by the State it has been averred that 17 prosecution witnesses have been cited and the charge has not been framed and the case is fixed for filing reply to the application under Section 227 Cr.P.C. It has further been averred that proposal for the grant of sanction had been sent to the office of the Director, Bureau of Investigation, Punjab on 28.02.2021 for submission of the same in the office of the Principal Secretary, Department of Home Affairs & Justice, Punjab. The same was returned on 16.11.2021 after raising certain objections and a fresh one is to be sent again after removal of the objections.

Section 45 of the 1967 Act talks about the bar of taking cognizance without the previous sanction of the Central Government regarding the offence under Chapter-III and Section 13 falls under the same. Sub-section 2 of Section 45 further talks about sanction for prosecution to be given within such time and make its report containing the recommendations to the Central Government or as the case may be by

the State Government, who has to take an independent view of the evidence gathered by the Investigating Agency and make recommendations accordingly. The said provisions read as under:-

“45.Cognizance of offences.—[(1)] No court shall take cognizance of any offence—

(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapter IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation, within such time as may be prescribed, to the Central Government or, as the case may be, the State Government.]

Similarly Rule 3 of the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 further safeguard the interests of the accused that the report is to be made within 7 working days of the receipt of the evidence gathered by the investigating officer under the Code and Rule 4 further provides that sanction has to be taken by the State Government within 7 working days after the receipt of the recommendation of the authority. Rules 3 & 4 read as under:

“3. Time limit for making a recommendation by the Authority.-

The Authority shall, under sub-section (2) of section 45 of the Act, make its report containing the recommendations to the Central Government [or, as the case may be, the State

Government] within seven working days of the receipt of the evidence gathered by the investigating officer under the Code.

4. Time limit for sanction of prosecution.- The Central Government [or, as the case may be, the State Government] shall, under sub-section (2) of section 45 of the Act, take a decision regarding sanction for prosecution within seven working days after receipt of the recommendations of the Authority.”

As noticed the State Government has yet to do the needful which would be clear from the paragraph No.13 of the reply filed, which reads as under:-

“That a proposal for the grant of sanction to prosecute the petitioner and co-accused Jasbir Singh under sections 295-A, 121-A and 153-A of the Indian Penal Code and under section 13 of the Unlawful Activities Prevention Act, 1967 was sent to the office of the Director, Bureau of Investigation, Punjab by the office of the Senior Superintendent of Police, Amritsar (Rural) vide letter No. 8545-A3 dated 28.02.2021 for the submission of the same in the office of the Principal Secretary, Department of Home Affairs & Justice, Govt. of Punjab for grant of sanction envisaged under section 196 of the Cr.P.C and Section 45 of the Unlawful Activities Prevention Act, 1967 from the competent authority, which was returned by the office of the Director, Bureau of Investigation, Punjab to the office of the Senior Superintendent of Police, Amritsar (Rural) vide letter No. 5230/Crime/Inves.-II dated 16.11.2021 after raising certain objections. A fresh proposal for the grant of aforesaid sanction will be sent again to the office of the Director, Bureau of Investigation, Punjab after the removal of the objections.”

The bar as such under Section 43-D (5) and (6) would also be not applicable which provides for offences under Chapter IV and VI of the 1967 Act. Counsel has also pointed out from the list of groups as such which were recovered from his phone that information of the said groups

are not falling within the banned terrorist organization. The details of the said list is reproduced as under:-

“Khalistan Gorila
Baba Bhidhi Chand China
Baba Khalsa Group
Warha Shera Singha
Damdami Taksal
Khalistan Gorila Khadku
Jasbir Sandhu”

As per the first Schedule of the 1967 Act the abovesaid groups do not figure in the list of the terrorist organizations and, therefore, *prima facie* it cannot be said that the appellant was associating himself or professes to be associated with a terrorist organization with intention to further its activities and commit an offence relating to membership of a terrorist organization, as per the definition which is given under Section 2 (m) which reads as under:-

“2 (m) “terrorist organisation” means an organisation listed in the or an organisation operating under the same name as an organisation so listed.”

Thus, keeping in view the above cumulative facts and keeping the fact in mind the fact that a period of over 2 ½ years has gone by since the date of appellant’s detention and on account of the fact that for want of sanction the Court is not liable to take cognizance, no useful purpose will be served to keep the appellant in custody.

The State has also filed the custody certificate dated 07.12.2022 which goes on to show that the appellant has undergone 2 years, 6 months and 1 day, apart from the fact that there is no other case pending against him except under Section 52-A of the Jail Act which was registered on 10.07.2021. It is, thus, apparent that *prima facie* the appellant does not have any criminal background and, therefore, is entitled

for the bail during the pendency of the trial. Accordingly, the present appeal is allowed. He be released on bail on furnishing of bail bonds/surety bonds to the satisfaction of the Special Court, Amritsar.

**(G.S. SANDHAWALIA)
JUDGE**

**(HARPREET KAUR JEEWAN)
JUDGE**

13.12.2022

Naveen

Whether speaking/reasoned :

Yes/No

Whether Reportable :

Yes/No



सत्यमेव जयते

