

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
THURSDAY, THE SEVENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

:PRESENT:

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO: 11098 OF 2023

Between:

Mohd Kaleem

Petitioner/Accused No.7

AND

The National Investigation Agency, By Deputy Superintendent of Police
Hyderabad

Respondent/Complainant

Petition under Section 482 of Cr.P.C, praying that in the circumstances stated in the grounds filed in the Criminal Petition, the High Court may be pleased to enlarge the petitioner/ A 7 on bail in SC 03 of 2023 (Rc01/2-23/NIA/HYD) on the file of IV Addl Metropolitan session Judge Cum Spl Court for the NIA cases Hyderabad.

The petition coming on for hearing, upon perusing the Petition and the grounds filed in and the order of the High Court dated 23.11,2023 made herein and upon hearing the arguments of Sri T. Sharath, Advocate for the Petitioner and Sri P.Vishnu Vardhan Reddy(Special Public Prosecutor for the NIA) for the Respondent, the Court made the following Order.

ORDER

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO.11098 OF 2023

ORDER:

1. Consequent to the orders passed by the Hon'ble Division Bench dated 23.11.2023 in Criminal Petition No.11098 of 2023, the case is posted before me, after the orders of the Hon'ble the Chief Justice.

2. **Brief facts:**

The petitioner, who is an accused turned into an approver. After his statement was recorded and pardoned by the Special Court, the petitioner filed petition under Section 439 of Cr.P.C for grant of bail. The said petition filed under Section 439 of Cr.P.C seeking bail was dismissed on 03.08.2023. Again petition was filed under Section 167(2) of Cr.P.C seeking mandatory bail. The said petition was also dismissed on 26.10.2023 in CrI.M.P.No.1322 of 2023 by the IV Additional Metropolitan Sessions Judge-cum-Special Court for NIA Cases, Nampally, Hyderabad. The reasons given by the Special Judge in both the petitions are that the petitioner was pardoned as he turned approver and in view of the judgment

of the High Court of Jharkhand in *Sudhanshu Ranjan @ Chhotu Singh v. The Union of India* in Cr.M.P.No.1300 of 2021 dated 22.04.2022, an approver cannot seek bail under Section 439 of Cr.P.C or of 167(2) of Cr.P.C, since he ceased to be an accused. The only remedy available is to file a petition under Section 482 of Cr.P.C. Giving the said finding, both the petitions were resultantly dismissed.

3. Aggrieved by the order of refusing bail on the ground that petition was not maintainable before the Special Court, petition was filed under Section 482 of Cr.P.C. Initially, office took objection to number the petition on the ground that an application under Section 482 of Cr.P.C is not maintainable and appeal has to be filed under Section 21 of the National Investigation Agency Act, 2008 (for short 'the Act').

4. The said case was posted before me. I directed the Registry to number the petition and post before the Hon'ble Division Bench placing reliance on the judgment of the Hon'ble Supreme Court in the case of *State of Andhra Pradesh v. Md.*

Hussain @ Saleem and Sadhwi Pragya Singh Thakur v. National Investigation Agency¹.

5. After the petition was numbered and placed before the Hon'ble Division Bench, learned Division Bench passed orders dated 23.11.2023 finding that; i) petitioner/approver ceased to be an accused as such Section 439 of Cr.P.C is not available to him for grant of bail, since an accused can only move for bail under the provisions of Section 439 of Cr.P.C and not an approver; ii) There is no consideration of an approver in the judgment of the Hon'ble Supreme Court in State of Andhra Pradesh v. Md. Hussain @ Saleem's case (supra); iii) Petition filed under Section 482 of Cr.P.C seeking bail by an approver is not an appeal filed under Section 21 of the Act.

6. The learned Division Bench further found that the view taken by the learned Single Judges of the Jharkhand High Court in Sudhanshu Ranjan @ Chhotu Singh v. The Union of India's case (supra), Jammu and Kashmir High Court in Tariq Ahmed Dar v National Investigation Agency², Rajkumar Sahu

¹ 2014 (1) SCC 258

² CRM (M) No.554 of 2022, order dated 11.04.2023

v. State of Chattisgarh³ of Chattisgarh High Court and Noor Taki alias Mammu v. State of Rajasthan⁴ of Rajasthan High Court and Shami Feroz v. National Investigation Agency⁵ of Kerala High Court is correct. In Delhi Administration v. Jagadeesh⁶, the Hon'ble Supreme Court held that an accused granted pardon will only be a witness and not accused. In Suresh Chandra Bahri v. State of Bihar⁷ and Arnab Manoranjan Goswami v. State of Maharashtra and others⁸, the Hon'ble Supreme Court held that bail can be granted under Section 482 of Cr.P.C.

7. The Hon'ble Division Bench held that the Hon'ble Supreme Court in the judgment of Hon'ble Supreme Court in State of Andhra Pradesh v. Md. Hussain @ Saleem's case (supra) did not discuss regarding an approver. Accordingly the Judgment has no application in the present facts of the case.

³ CrI.M.P.No.846 of 2020 dated 15.07.2020

⁴ 1986 SCC OnLine Raj.11

⁵ 2011 CrI.L.J 1529

⁶ AIR 1998 SC 598

⁷ AIR 1994 SC 22420

⁸ (2021) 2 SCC 427

8. Heard learned counsel for the petitioner, who reiterated his argument stating that an approver can only seek bail under Section 482 of Cr.P.C and in support of his contention, counsel relied on the judgments which were considered by the Hon'ble Division Bench. The Special Public Prosecutor did not oppose the bail and reported no objection for grant of bail.

9. Section 21 of the Act reads as follows:

"21 Appeals. -

(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days."

10. Section 21 of the Act starts with a non obstante clause restricting applicability of the provisions of Cr.P.C in any

judgment, sentence or order of a Special Court on facts and on law. Further, the judgment, sentence or order can only be appealed before the High Court. Under Sub-section (2), every such appeal shall be heard by a bench of two judges of the High Court.

11. Under sub-section (4) any order granting or refusing bail, an appeal would lie to the High Court.

12. The scope, reasons and the intention of the Legislature in enacting a provision has to be considered while interpreting a provision. Any provision cannot be interpreted in the manner to overcome the intent of the Legislature. The Hon'ble Supreme Court in *Union of India v. G.M. Kokil*⁹ explained that "*a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions*".

⁹ 1984 Supp SCC 196

13. The word used in Section 21 is “any” order, sentence or judgment. In the present case, the orders impugned are dated 03.08.2023 and 26.10.2023. A reading of Section 21(1) of the Act, it is clear that any such order, both on facts and on law would lie to the High Court which is not an interlocutory order.

14. The Hon’ble Supreme Court in the case of State of Andhra Pradesh v. Md. Hussain @ Saleem’s case (supra) while interpreting Section 21 of the Act, held as follows:

“16. The aboveresferred Section 21(4) of the NIA Act provides that an appeal lies to the High Court against an order of the Special Court granting or refusing bail. However sub-section (3) which is a prior sub-section, specifically states that “except as aforesaid”, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court. Therefore, the phrase “except as aforesaid” takes us to sub-sections (1) and (2). Thus when anybody is aggrieved by any judgment, sentence or order including an interlocutory order of the Special Court, no such appeal or revision shall lie to any court except as provided under sub-sections (1) and (2), meaning thereby only to the High Court. This is the mandate of Section 21(3) of the NIA Act.”

17. There is no difficulty in accepting the submission on behalf of the appellant that an order granting or refusing bail is an interlocutory order. The point however to be noted is that as provided under Section 21(4) of the NIA Act, the appeal against such an order lies to the High Court only, and to no other court as laid down in Section 21(3). Thus it is only the interlocutory orders granting or refusing bail which are made appealable, and no other interlocutory orders, which is made clear in Section 21(1), which lays down that an appeal shall

lie to the High Court from any judgment, sentence or order, not being an interlocutory order of a Special Court. Thus other interlocutory orders are not appealable at all. This is because as provided under Section 19 of the Act, the trial is to proceed on day-to-day basis. It is to be conducted expeditiously. Therefore, no appeal is provided against any of the interlocutory orders passed by the Special Court. The only exception to this provision is that orders either granting or refusing bail are made appealable under Section 21(4). This is because those orders are concerning the liberty of the accused, and therefore although other interlocutory orders are not appealable, an appeal is provided against the order granting or refusing the bail. Section 21(4), thus carves out an exception to the exclusion of interlocutory orders, which are not appealable under Section 21(1). The order granting or refusing the bail is therefore very much an order against which an appeal is permitted under Section 21(1) of the Act.

18. Section 21(2) of the NIA Act provides that every such appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court. This is because of the importance that is given by Parliament to the prosecution concerning the Scheduled Offences. They are serious offences affecting the sovereignty and security of the State amongst other offences, for the investigation of which this special Act has been passed. If Parliament in its wisdom has desired that such appeals shall be heard only by a Bench of two Judges of the High Court, this Court cannot detract from the intention of Parliament. Therefore, the interpretation placed by Mr Ram Jethmalani on Section 21(1) that all interlocutory orders are excluded from Section 21(1) cannot be accepted. If such an interpretation is accepted it will mean that there will be no appeal against an order granting or refusing bail. On the other hand, sub-section (4) of Section 21 has made that specific provision, though sub-section (1) otherwise excludes appeals from interlocutory orders. These appeals under sub-section (1) are to be heard by a Bench of two Judges as provided under sub-section (2). This being the position, there is no merit in the submission canvassed on behalf of the applicant that appeals against the orders granting or refusing bail need not be heard by a Bench of two Judges.

(Bold letters and underlining by me)

15. The judgments in the case of Sudhanshu Ranjan @ Chhotu Singh v. The Union of India's case (supra) of High Court of Jharkhand High Court, judgment of Jammu and Kashmir High Court in Tariq Ahmed Dar v National Investigation Agency(supra), judgment of Chattisgarh High Court in Rajkumar Sahu v. State of Chattisgarh (supra), Noor Taki alias Mammu v. State of Rajasthan (supra) of Rajasthan High Court and Shami Feroz v. National Investigation Agency¹⁰ of Kerala High Court did not take into consideration the scope of Section 21 of the Act nor the interpretation by the Hon'ble Supreme Court in Saleem's case (supra). However, the discussion was wholly based on the status of an 'approver'.

16. In the Judgment of Hon'ble Supreme Court in the case of Suresh Chandra Bahri v. State of Bihar (supra) and Arnab Manoranjan Goswami v. State of Maharashtra and others (supra), observed that bail application under Section 482 of Cr.P.C is maintainable. However, both the judgments were not dealing with the National Investigation Agency Act.

¹⁰ 2011 Cr.L.J 1529

17. Learned Division Bench observed that the status of an approver was not discussed in State of Andhra Pradesh v. Md. Hussain @ Saleem's case (supra) and passed order accordingly.

18. The word "any" is sweeping and would include all orders in all circumstances except interlocutory orders and did not confine to any contingencies. To illustrate; i) anticipatory bail may be sought by a person to whom Section 91 or 160 of Cr.P.C notice is issued; ii) A person sought to be included as an accused during the course of criminal trial under Section 319 of Cr.P.C may also approach the Court seeking anticipatory bail or for quashing the proceedings undertaken by the trial Court; iii) a defacto complainant or any aggrieved person may approach the High Court aggrieved by the grant of bail to an accused seeking cancellation of his bail etc. These illustrations are not exhaustive when the Courts have to deal with 'bail' either anticipatory bail, regular bail or cancellation of bail. In all the above, accused is not the petitioner.

19. Unless it is specified in the enacted provision, starting with non-obstante clause, that it is limited to a particular provision of law, Courts cannot interpret provisions on its own by finding that a certain contingency was not mentioned. If the intention of the Legislature is to limit application of a provision, the same would be clear. To illustrate, Section 142 of the Negotiable Instruments Act starts with a non obstante clause and Section 142(a) confines to the mode of filing a complaint. Section 142 of the Negotiable Instruments Act reads as follows:

“142 Cognizance of offences. —Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—
(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;”

20. As already discussed above Section 21 of the Act totally excludes the applicability of Code of Criminal Procedure without exception regarding any (i) judgment, (ii) sentence and (iii) order, and if a person aggrieved by any order or judgment or sentence, it shall lie to the High Court to be heard by a Division Bench.

21. Bail was refused to the petitioner on the question of law, that an approver cannot be granted bail by Special Court. The order is not interlocutory in nature and attained finality. Twice the prayer for bail was refused and petitions dismissed. Under Section 21(4) of the Act, 'bail' is not considered as an 'interlocutory order'. The word 'accused' is not used in Section 21 of the NIA Act which the Legislation was conscious and intended to cover every 'judgment', 'sentence' or 'order' without classification and includes 'everyone' and not only an accused. The word 'accused' is not used in Section 21 of NIA Act, unlike Sections 437 & 439 of Cr.P.C, which provisions are for bail, specifically mention 'accused'.

22. The Hon'ble Supreme Court in the case of State of Andhra Pradesh v. Md. Hussain @ Saleem's case (supra) held as follows:

"27.3. Thus, where the NIA Act applies, the original application for bail shall lie only before the Special Court, and appeal against the orders therein shall lie only to a Bench of two Judges of the High Court."

23. Apart from an approver, who seeks bail as illustrated earlier, there can be several other contingencies, which may

arise where a person who is not an accused can seek remedy of regular bail, anticipatory bail or cancellation of bail.

24. In view of the foregoing discussion and following the judgment of the Hon'ble Supreme Court in the case of State of Andhra Pradesh v. Md. Hussain @ Saleem's case (supra), present application seeking bail can only be heard by a Division Bench. I am of the firm opinion that Single Bench cannot entertain the present application.

25. In the present case, petitioner has approached this Court aggrieved by the order of the Special Court, which dismissed his prayer for bail though on account of inability of the Special Court to grant bail to an approver, the said order is appealable order by virtue of Section 21(1) of the Act and to be heard by a Division Bench under Section 21(2) of the Act.

26. For the aforementioned reasons, when the view taken by the different High Courts as stated supra was relied on by the Learned Division Bench, which High Courts did not consider the scope and intent of Section 21 of the Act and also the

judgment of the Hon'ble Supreme Court in the case of State of Andhra Pradesh v. Md. Hussain @ Saleem's case (supra) interpreting Section 21 of the Act, the finding that the application for bail of an approver, which is rejected by an order of a Special Court has to heard by a Single Bench, is not in accordance with the scope and intent of section 21 of NIA Act.

27. I am bound by the orders of the learned Division Bench.

28. However, for the reasons mentioned above, I am not inclined to entertain the bail application since issues/questions arise for consideration before entertaining the bail petition.

29. Case file may be placed before the Hon'ble the Chief Justice for taking steps to post the case before a Larger Bench or pass any such orders as his Lordship deems appropriate for deciding on the following issues/questions, before entertaining the bail application:

1) When the Legislature has consciously avoided the word 'accused' in Section 21 of the Act and uses the word 'any'

order in Section 21(1), will it not include an approver's bail dismissal order. More particularly when the Hon'ble Supreme Court in Saleem's case while interpreting Section 21 of the Act held that 'anybody' aggrieved by 'any' order not being an interlocutory order has to prefer an appeal.

2) When there is an order of Special Court refusing bail to the petitioner on the question of law, is it not an appealable order under Section 21(1) of the Act, particularly when bail orders are excluded from the category of 'interlocutory order' in Section 21(3) of the Act and made appealable under section 21(4), to be heard by a Division Bench in accordance with section 21(2).

3) When the scope and intent of Section 21 of the Act and/or the interpretation of Section 21 of the Act by the Hon'ble Supreme Court in State of Andhra Pradesh v. Md. Hussain @ Saleem's case (supra), in i) Sudhanshu Ranjan @ Chhotu Singh (supra) ii) Tariq Ahmed Dar (supra) iii) Rajkumar Sahu v. State of Chattisgarh (supra); iv) Noor Taki alias Mammu (supra), are not discussed, whether the Hon'ble Division Bench endorsing the view of the High Courts and

holding that bail petition under section 482 Cr.P.C has to be heard by a Single Judge is correct.

One fair copy to,

The Honourable Sri Justice K.Surender, High Court for the State of Telangana at Hyderabad (for kind perusal)

//TRUE COPY//

SD/-A.V.S. PRASAD
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The IV Addl. Metropolitan session Judge Cum Spl Court for the NIA cases, Nampally, at Hyderabad
2. The XII Addl. Chief Metropolitan Magistrate, Hyderabad
3. The Superintendent, Chanchalguda Jail, Hyderabad
4. The Deputy Superintendent of Police, National Investigation Agency, Hyderabad (by RPAD)
5. The Under Secretary, Ministry of External affairs, Union of India, New Delhi
6. The Secretary, Advocate Association, High Court of Telangana, Hyderabad
7. 11 LR Copies
8. One CC to Sri T. SHARATH, Advocate [OPUC]
9. Two CCs to Special Public Prosecutor, High Court at Hyderabad [OUT]
10. One spare copy

HIGH COURT

KS,J

DATED:07/12/2023

ORDER

CRLP.No.11098 of 2023

DIRECTION

