
Neutral Citation No. 2023:PHHC:131666-DB
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRA-D-542-2023

Date of decision : 10.10.2023

Sukhpreet Kaur

... Appellant

Versus

State of Punjab

.. Respondent

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE LALIT BATRA

Present:- Mr. Arshdeep Singh Brar, Advocate for the appellant.

Mr. Karunesh Kaushal, AAG, Punjab.

Anupinder Singh Grewal, J. (Oral)

The appellant has challenged the order passed by the Special Judge, Moga dated 03.02.2023 dismissing her bail application under Section 439 Cr.P.C. in FIR No.222 dated 04.10.2022 under Sections 25(6), 25(7) of the Arms Act, Sections 10, 13, 18 & 20 of the Unlawful Activities (Prevention) Act, 1967 [for short, 'the UAPA'] and Sections 3, 4, 5 & 6 of the Explosive Substances Act, 1908, registered at Police Station Baghapurana.

2. Learned counsel for the appellant submits that there is no *prima facie* material which would connect the appellant with the commission of the offence except the statement made by co-accused-Vijay Singh @ Vija, who is the husband of the appellant. There is no discovery of any fact or any article in pursuance to the disclosure statement. The allegations against co-accused Vijay Singh are also on the basis of statement of co-accused, namely, Harpreet Singh @ Hira from whom recovery of two pistols, 50 live cartridges and 03 hand grenades have been effected. The appellant was at an advanced stage of pregnancy when she had been arrested and had given birth to

a child in jail. She is not involved in any other criminal case. In support of his submissions, he has relied upon the judgments of the Supreme Court in the cases of **Jaffar Hussain Dastagir versus State of Maharashtra, (1969) 2 SCC 872** and **Yedala Subba Rao and another versus Union of India, (2023) 6 SCC 65**.

3. Learned State counsel, upon instructions from DSP Jasjyot Singh, who is the Investigating Officer, submits that the appellant had been arraigned as an accused on the statement of co-accused-Vijay Singh. He has referred to the affidavit dated 05.10.2023 filed by the Investigating Officer. He also submits that although challan has been filed but charges are yet to be framed. He has filed the custody certificate which indicates that the appellant is in custody for 11 months and 25 days as on 09.10.2023.

4. Heard.

5. The appellant has been arraigned as an accused on the statement of co-accused-Vijay Singh, who is her husband. The disclosure statement of co-accused Vijay Singh is reproduced hereunder:-

“During investigation conducted by me in presence of following witnesses, accused Vija Singh @ Vijay Singh got recorded his statement that my wife Sukhpreet Kaur @ Sukhi is fully supporting me in the illegal activities being done by me. I alongwith Ranjoodh Singh @ Jyoti son of Satpal Singh resident of Ganji Gulab Singh Wala, taken the parcel from border on the basis of location sent by Arsh Dala, in said parcel one bag containing hand-grenade and pistol etc. I handed over said parcel to my wife Sukhpreet Kaur @ Sukhi to kept conceal the same and my wife had concealed the said parcel and after that as per my directions she sent the said parcel to me and thereafter, I and Ranjodh Singh @ Jyoti had further send the same to the persons related to Arsh Dala. On this memo of disclosure statement has been prepared. On it signatures of Vija Singh @ Vijay Singh has been obtained and same has been witnessed by the

witnesses.”

6. It is manifest from a bare reading of the statement of co-accused Vijay Singh that although it is described as a disclosure statement under Section 27 of the Evidence Act but interestingly there is no discovery of any fact or recovery of any incriminating article from the appellant.

7. The Supreme Court in the case of **Jaffar Hussain Dastagir versus State of Maharashtra(supra)** had held that the disclosure statement would be admissible if it leads to discovery of fact. The relevant extract thereof is reproduced hereunder:-

“Under [Section 25](#) of the Evidence Act no confession made by an accused to a police officer can be admitted in evidence against him. An exception to this is however provided by [Section 26](#) which makes a confessional statement made before a Magistrate admissible in evidence against an accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. [Section 27](#) is a proviso to [Section 26](#) and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence. The embargo on statements of the accused before the police will not apply if all the above conditions are fulfilled. If an accused charged with a theft of articles or receiving stolen articles, within the meaning of [Section 411](#) I.P.C. states to the police, 'I will show you the articles at the place where I have kept them' and the articles are actually found there, there can be no doubt that the information given by him led to the discovery of a fact i.e. keeping of the articles by the accused at the place mentioned. The discovery of the fact deposed to in such a case is not the discovery of the articles but the discovery of the fact that the articles were kept by the accused at a particular place. In principle there is no difference between the above

statement and that made by the appellant in this case which in effect is that 'I will show you the person to whom I have given the diamonds exceeding 200 in number'. The only difference between the two statements is that a "named person" is substituted for 'the place' where the article is kept. In neither case are the articles or the diamonds the fact discovered."

This judgment has been relied upon by the Supreme Court in the case of **Yedala Subba Rao and another versus Union of India(supra)**.

8. We are conscious of the fact that the provisions of the UAPA are stringent. At the same time, it is necessary for the Court to carefully scrutinize and peruse the material against an accused. Section 43(D)(5) of the UAPA is reproduced hereunder:-

“Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true.”

9. In terms of Section 43(D)(5) of the UAPA, the Court would not direct the release of the appellant/petitioner on bail if there are reasonable grounds for believing that the allegations are *prima facie* true. In the instant case besides the statement of co-accused, who is the husband of the appellant, no incriminating material has been brought to the notice of this Court which would indicate *prima facie* involvement of the appellant in the commission of the offence. At the time of her arrest, she was stated to be at an advanced stage of pregnancy and a child was born in jail and by now, she has put in almost a

year in custody. The appellant has been arraigned as an accused on the statement of her husband-Vijay Singh, who in turn had been arraigned as an accused on the statement of co-accused Harpreet Singh @ Hira. The affidavits filed by the respondent/State dated 05.10.2023 and 23.05.2023 do not disclose any recovery from the appellant or her husband.

10. We, therefore, have no hesitation to hold that in the aforementioned facts and circumstances, there is no *prima facie* material which would implicate the appellant for the commission of an offence under Sections 10, 13, 18 & 20 of the UAPA. The appellant, who is a lady with an infant, has been in custody for almost a year. We, therefore, deem it appropriate to allow the appeal and grant her the concession of regular bail. The order passed by the Special Judge, Moga dated 03.02.2023 is set aside. The appellant is ordered to be released on regular bail on her furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

11. However, it is clarified that the observations made hereinabove would not have any bearing on the merits of the case.

(ANUPINDER SINGH GREWAL)
JUDGE

(LALIT BATRA)
JUDGE

October 10, 2023

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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No