

**CRA-D-802-2023****1****2024:PHHC:052096-DB****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****266****CRA-D-802-2023
DATE OF DECISION: 18.04.2024****MANJIT KAUR**

... Appellant (s)

Versus

NATIONAL INVESTIGATION AGENCY

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE KIRTI SINGH**

Present: Mr. Bhanu Partap Singh, Advocate for the appellant.

Mr. Sukhdeep Singh Sandhu, Special Prosecutor for NIA.

ANUPINDER SINGH GREWAL, J. (ORAL)

This appeal has been preferred against the order dated 05.06.2023 passed by the Learned Special Judge, NIA Punjab, SAS Nagar (Mohali) in BA-1380 of 2023, RC No.07 of 2020/NIA/DLI in FIR No.90 dated 02.06.2019 (A-1), under Sections 4, 5 of the Explosive Substance Act, Section 13, 17, 18, 18-B, 19, 20, 23 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'UAP Act') and Section 120-B IPC, registered at Police Station Raja Sansi, Amritsar (Rural), District Amritsar, Punjab vide which the regular bail application of the appellant has been dismissed.

2. Learned counsel for the appellant submits that the appellant has been arraigned as an accused on the ground that she had harboured the co-accused who had hatched a criminal conspiracy with other co-accused for setting up separate state. He, however, submits that prior to the registration of the instant case, she was not involved in any other serious criminal activity except cases under Section 420 IPC were registered against her. The appellant

**CRA-D-802-2023****2****2024:PHHC:052096-DB**

was helping her husband in immigration business and providing boarding and lodging at Cambodia. It is alleged that she had helped co-accused Kulwinderjit Singh @ Khanpuria to flee the country and arranged his stay in Cambodia during the period from January to March 2019. Co-accused Kulwinderjit Singh @ Khanpuria was neither an accused nor a wanted criminal in connection with the terrorist activity at that time. He has not been declared as a terrorist as per Schedule 4 of the UAPA till date. No recovery of any incriminating material whatsoever has been effected from her. The appellant, who is 58 year old lady, is in custody for over 04 years and 08 months since her arrest on 18.08.2019.

3. Learned counsel for the respondent, however, submits that the appellant is involved in serious unlawful activities. She had helped Kulwinderjit Singh @ Khanpuria in fleeing the country and had also conspired with another accused Harmeet Singh @ Ph.D., who was actively involved in terrorist activities. The Special Court, NIA Bench, SAS Nagar, after finding a prima facie case against the appellant, has framed charges under Sections 17, 18, 18 (b), 19 & 20 of the UAPA. Kulwinderjit Singh @ Khanpuria was also an accused in three FIRs No.77/07 dated 19.12.2007, Police Station Special Cell, Delhi, 132 dated 31.10.2018, Police Station Lahori Gate, Division No.04, District Patiala and RC-14/2019/NIA/DLI dated 27.06.2019, Police Station NIA, New Delhi. In response to the query of this Court as to whether Kulwinderjit Singh @ Khanpuria is declared as proclaimed offender or as to when he was declared as proclaimed offender or terrorist, learned State counsel, upon instructions from DSP Preetinder Kaur Virk, submits that in the FIR No.132 dated 31.10.2018, open arrest warrants were issued against Kulwinderjit Singh @ Khanpuria by the competent Court on 10.08.2019 and in this case, he was declared proclaimed offender on 17.11.2021. In another NIA case, he was declared proclaimed offender on 03.02.2021. He has relied upon the judgment of the Supreme Court in the case of **Gurwinder Singh Vs. State of Punjab, (2024) INSC 92** and submits that the judgment of the Supreme Court in the case of **K.A. Najeeb Vs. Union of India, (2021) 3 SCC**, would not help the case of the appellant as long custody by itself cannot be a ground to grant bail when a *prima facie* case is made out.

**CRA-D-802-2023****3****2024:PHHC:052096-DB**

The appellant is also involved in several other criminal cases. He further submits that the appellant was nominated as an accused in FIR No.132 dated 31.10.2018, under Sections 13/16/18/20 of UAP Act, Sections 3/4/5 of Explosive Substances Act and Sections 25/54/59 of the Arms Act, Police Station Lahori Gate, Division No.04, District Patiala on 23.11.2018. He, therefore, submits that she was actively involved in terrorist activities and is not entitled to the concession of regular bail. There is every likelihood of her indulging in these activities especially when she has links across the border and there is an apprehension of her fleeing the country.

4. Heard.

5. The allegations against the appellant are that she had helped the co-accused Kulwinderjit Singh @ Khanpuria flee the country and had facilitated his stay at Cambodia. These allegations of harbouring the co-accused Kulwinderjit Singh @ Khanpuria pertain to the period from January 2019 to March 2019. It is true that Kulwinderjit Singh @ Khanpuria had been arraigned as an accused in the cases prior to this period but he had not been declared as a proclaimed offender at that time. He was declared as a proclaimed offender in the instant case on 17.11.2021. The open arrest warrant was also issued against him on 10.08.2019. It appears that the appellant has not been declared as a terrorist till date. The appellant is a 58 years old lady and has been in custody for a period of 04 years and 08 months since her arrest on 18.08.2019. No recovery of any incriminating material has been effected from her as yet. There is nothing to suggest at this stage as to whether any monetary payment had been made to her or any dubious monetary transaction had taken place in her accounts.

6. We are conscious of the fact that to grant bail to an accused under the UAP Act, the conditions specified under Section 43-D have to be satisfied. However, the Supreme Court in the case of **K.A. Najeeb Vs. Union of India (supra)** had held that an accused under the UAP Act can be enlarged on bail in terms of Article 21 of the Constitution of India in view of the long custody as an undertrial. This view of the Supreme Court has been reiterated in the case of **Shoma Kanti Sen Vs. State of Maharashtra, Criminal Appeal No.2595 of 2023**, decided on **05.04.2024**. We, therefore, have no hesitation to

**CRA-D-802-2023****4****2024:PHHC:052096-DB**

hold that the appellant, who is a 58 years old lady, has been in custody for over 04 years and 08 months, would be entitled to be released on bail at this stage when only 12 out of 55 prosecution witnesses have been examined and the conclusion of the trial would take some time.

7. Consequently, the instant appeal is allowed and the order dated 05.06.2023 passed by the learned Special Judge, NIA Punjab, SAS Nagar (Mohali) 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 Judge concerned.

(ANUPINDER SINGH GREWAL)
JUDGE

(KIRTI SINGH)
JUDGE

18.04.2024

SwarnjitS

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No