

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Filing No.: A.B.A. No.19142 of 2024

Gulshan Kumar Singh Petitioner.
-Versus-
The State of Jharkhand Opp. Party.

CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner : Mr. Prakhar Harit, Advocate
Ms. Divya, Advocate
For the State : Mr. Pankaj Kr. Mishra, A.P.P.

Order No.03

Date: 21.08.2024

1. The present anticipatory bail application has been filed apprehending arrest in connection with Satbarwa P.S Case No. 33 of 2024 registered under section 4 and 5 of the Explosive Substances Act, 1908.
2. The office has raised objection regarding maintainability of the present anticipatory bail application being a matter relating to Scheduled Offence under the National Investigation Agency Act, 2008 (hereinafter be referred as the Act, 2008).
3. Heard the learned counsel for the petitioner on the point of maintainability.
4. The learned counsel for the petitioner by referring to section 21 of the Act, 2008 submits that the said section provides for filing of appeal before the Division Bench of the High Court against any judgment, sentence or order passed by a Special Court and since in the present case, the impugned order has not been passed by a Special Court, rather by the Court of Additional Sessions Judge-

III, Palamau at Daltonganj, if the office objection is accepted, the petitioner would be remediless.

5. The short question that falls for consideration of this court is as to whether an anticipatory bail application is maintainable before the regular Bench of High Court against the order passed by the Court of Additional Sessions Judge-III, Palamau at Daltonganj rejecting the petitioner's anticipatory bail petition filed with respect to the offences punishable under Sections 4 & 5 of the Explosive Substances Act, 1908 which are the scheduled offences under the Act, 2008, or an appeal is maintainable before the Division Bench of the High Court in view of section 21(4) of the Act, 2008.
6. Before coming to the said issue, it would be appropriate to go through the relevant provisions of the Act, 2008 which has been promulgated to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and the offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto.
7. Section 6 of the Act, 2008 provides that when any information relating to Scheduled Offence i.e the offence

specified in the schedule of the Act, 2008, is received by the Officer-in-Charge of the police station, the same shall be recorded under section 154 of the Code of Criminal Procedure (Now Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023) and a report shall be forwarded to the State Government forthwith. Subsequently, the State Government shall forward the said report to the Central Government as expeditiously as possible. On receipt of report from the State Government, the Central Government shall determine as to whether the offence is a Scheduled Offence or not and also as to whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency. Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence. It has further been provided that where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency. It has also been made clear that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation.

8. Section 8 provides power to the National Investigating Agency (NIA) for investigating connected offences. It has been provided that while investigating any Scheduled Offence, the Agency may also investigate any other offence which the accused is alleged to have committed if the same is connected with the Scheduled Offence.
9. Section 10 provides that save as otherwise provided in the Act, 2008, nothing contained in the said Act shall affect the powers of the State Government to investigate and prosecute any Scheduled Offence or other offences under any law for the time being in force.
10. Section 11 states about the power of the Central Government to designate one or more courts of Session as Special Courts by notification in the Official Gazette in consultation with the Chief Justice of the High Court, for the trial of Scheduled Offences with respect to such area or areas, or for such case or class or group of cases, as may be specified in the notification.
11. Section 13 states about jurisdiction of Special Courts. It provides that every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it has been committed. However, having regard to certain exigencies of the situation prevailing in a State as mentioned in the Section 13(2) of the Act, 2008, the Supreme Court may transfer any case pending before a Special Court to any other Special Court

within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

12. Section 21 provides for the provision of appeal and the same is reproduced hereinbelow for the ready reference in the present case: -

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.

13. Thus, section 21 of the Act, 2008 explicitly provides that an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court only to the High Court both on facts and on law which shall be heard by a Bench of two Judges of the High Court and 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. It has further been provided that an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

14. Section 22 of the Act, 2008 empowers the State Government to designate one or more Courts of Session as Special Courts for the trial of offences under any or all the enactments specified in the Schedule of the Act, 2008. Sub-section (3) of the said section provides that the jurisdiction conferred by the said Act on a Special Court shall, until a Special Court is designated by the State Government under Section 22(1) for the trial of any offence punishable under this Act be exercised by the Court of Session of the Division in which such offence has been committed and it shall have all the powers to follow the procedure provided under Chapter-IV (Special Courts) of the Act, 2008.
15. In the case of **Bikramjit Singh Vs. State of Punjab** reported in **(2020) 10 SCC 616**, the Hon'ble Supreme Court has held as under:-

23. It will be seen that the aforesaid notification has been issued under Section 22(1) of the NIA Act. What is important to note is that under Section 22(2)(ii), reference to the Central Agency in Section 13(1) is to be construed as a reference to the investigation agency of the State Government — namely, the State Police in this case. Thereafter, what is important to note is that notwithstanding anything contained in the Code, the jurisdiction conferred on a Special Court shall, until a Special Court is designated by the State Government, be exercised only by the Court of Session of the Division in which such offence has been committed vide sub-section (3) of Section 22; and by sub-section (4) of Section 22, on and from the date on which the Special Court is designated by the

State Government, the trial of any offence investigated by the State Government under the provisions of the NIA Act shall stand transferred to that Court on and from the date on which it is designated.

24. Section 13(1) of the NIA Act, which again begins with a non obstante clause which is notwithstanding anything contained in the Code, read with Section 22(2)(i), states that every Scheduled Offence that is investigated by the investigation agency of the State Government is to be tried exclusively by the Special Court within whose local jurisdiction it was committed.

25. When these provisions are read along with Section 2(1)(d) and the provisos in Section 43-D(2) of the UAPA, the scheme of the two Acts, which are to be read together, becomes crystal clear. Under the first proviso in Section 43-D(2)(b), the 90-day period indicated by the first proviso to Section 167(2) of the Code can be extended up to a maximum period of 180 days if "the Court" is satisfied with the report of the Public Prosecutor indicating progress of investigation and specific reasons for detention of the accused beyond the period of 90 days. "The Court", when read with the extended definition contained in Section 2(1)(d) of the UAPA, now speaks of the Special Court constituted under Section 22 of the NIA Act. What becomes clear, therefore, from a reading of these provisions is that for *all* offences under the UAPA, the Special Court alone has exclusive jurisdiction to try such offences. This becomes even clearer on a reading of Section 16 of the NIA Act which makes it clear that the Special Court may take cognizance of an offence without the accused being committed to it for trial upon receipt of a complaint of facts or upon a police report of such facts. What is equally clear from a reading of Section 16(2) of the NIA Act is that even though offences may be punishable with imprisonment for a term not exceeding 3 years, the Special Court alone is to try such offence — albeit in a summary way if it thinks it fit to do so. On a conspectus of the abovementioned provisions, Section 13 read with Section 22(2)(i) of the NIA Act, in particular, the argument of the learned counsel appearing on behalf of the State of Punjab based on Section 10 of the said Act has no legs to stand on since the Special Court has exclusive jurisdiction over every Scheduled Offence investigated by the investigating agency of the State.

26. Before the NIA Act was enacted, offences under the UAPA were of two kinds — those with a maximum imprisonment of over 7 years, and those with a maximum imprisonment of 7 years and under. Under the Code as applicable to offences against other laws, offences having a maximum sentence of 7 years and under are triable by the Magistrate's courts, whereas offences having a maximum sentence of above 7 years are triable by Courts of Session. This scheme has been completely done away with by the NIA Act, 2008 as *all* Scheduled Offences i.e. all offences under the UAPA, whether investigated by the National Investigation Agency or by the investigating agencies of the State Government, are to be

tried exclusively by Special Courts set up under that Act. In the absence of any designated court by notification issued by either the Central Government or the State Government, the fallback is upon the Court of Session alone. Thus, under the aforesaid scheme what becomes clear is that so far as all offences under the UAPA are concerned, the Magistrate's jurisdiction to extend time under the first proviso in Section 43-D(2)(b) is non-existent, "the Court" being either a Sessions Court, in the absence of a notification specifying a Special Court, or the Special Court itself. The impugned judgment in arriving at the contrary conclusion is incorrect as it has missed Section 22(2) read with Section 13 of the NIA Act. Also, the impugned judgment has missed Section 16(1) of the NIA Act which states that a Special Court may take cognizance of any offence without the accused being committed to it for trial, inter alia, upon a police report of such facts.

16. In the aforesaid judgment the Hon'ble Supreme Court has held that all Scheduled Offences whether investigated by the National Investigation Agency or by the investigating agencies of the State Government, are to be tried exclusively by Special Courts set up under the Act, 2008 and in the absence of any designated court by notification issued either by the Central Government or the State Government, the fallback is upon the Court of Session alone.
17. Thus, the Court of Session dealing with the scheduled offences under the Act, 2008 in absence of a Special Court constituted either by the Central Government or by the State Government under section 11 and 22 respectively, is treated as Special Court and it shall have all the powers to follow the procedure provided under Chapter-IV of the Act, 2008. Though, section 21 states about filing of appeal before the Division Bench of the High Court against any judgment, sentence or order passed by the Special Court,

the same would also apply for any judgment, sentence or order passed by the Session Court hearing the matter relating to scheduled offences under the Act, 2008. The word "Special Court" as has been mentioned in section 21 will have an extended definition and the same will include Session Court exercising the power of Special Court while dealing with the matter relating to Scheduled Offences in absence of designated Special Court constituted by notification in the Official Gazette under section 11 or 22 of the Act, 2008.

18. In the case of **Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla** reported in **(2016) 3 SCC 619** the Hon'ble Supreme Court has held as under: -

31. The aforesaid two reasons given by me, in addition to the reasons already indicated in the judgment of my learned Brother, would clearly demonstrate that the provisions of Section 15(2) of the Act require purposive interpretation so that the aforesaid objective/purpose of such a provision is achieved thereby. The principle of "purposive interpretation" or "purposive construction" is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the "purpose" behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it:

"Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language." [Aharon Barak, Purposive Interpretation in Law (Princeton University Press, 2005).]

32. Of the aforesaid three components, namely, language, purpose and discretion "of the court", insofar as purposive component is concerned, this is the ratio juris, the purpose at the core of the

text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualise. It is the function that the text is designed to fulfil.

33. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the courts not only in this country but in many other legal systems as well.

19. In the case of **Grid Corporation of Orissa Ltd. & Others Vs. Eastern Metals & Ferro Alloys & Others** reported in **(2011) 11 SCC 334** the Hon'ble Supreme Court has held as under: -

25. This takes us to the correct interpretation of Clause 9.1. The golden rule of interpretation is that the words of a statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following questions: (i) What is the purpose for which the provision is made? (ii) What was the position before making the provision? (iii) Whether any of the constructions proposed would lead to an absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of the provision? The answers to these questions will enable the court to identify the purposive interpretation to be preferred while excluding others. Such an exercise involving ascertainment of the object of the provision and choosing the interpretation that will advance the object of the provision can be undertaken, only where the language of the provision is capable of more than one construction. (See *Bengal Immunity Co. Ltd. v. State of Bihar* [AIR 1955 SC 661] and *Kanai Lal Sur v. Paramnidhi Sadhukhan* [AIR 1957 SC 907] and generally Justice G.P. Singh's *Principles of Statutory Interpretation*, 12th Edn., published by Lexis Nexis, pp. 124 to 131, dealing with the rule in *Heydon case* [(1584) 3 Co Rep 7a : 76 ER 637]).

20. In the case of **X Vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of**

Delhi & Another reported in **(2023) 9 SCC 433** the Hon'ble Supreme Court has held thus: -

31. The cardinal principle of the construction of statutes is to identify the intention of the legislature and the true legal meaning of the enactment. The intention of the legislature is derived by considering the meaning of the words used in the statute, with a view to understanding the purpose or object of the enactment, the mischief, and its corresponding remedy that the enactment is designed to actualise. [Justice G.P. Singh, Principles of Statutory Interpretation, (Lexis Nexis, 2016), at p. 12; State of H.P. v. Kailash Chand Mahajan, 1992 Supp (2) SCC 351; Union of India v. Elphinstone Spg. & Wvg. Co. Ltd., (2001) 4 SCC 139] Ordinarily, the language used by the legislature is indicative of legislative intent. In Kanai Lal Sur v. Paramnidhi Sadhukhan [Kanai Lal Sur v. Paramnidhi Sadhukhan, 1957 SCC OnLine SC 8] , Gajendragadkar, J. (as the learned Chief Justice then was) opined that "the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself". But when the words are capable of bearing two or more constructions, they should be construed in light of the object and purpose of the enactment. The purposive construction of the provision must be "illuminated by the goal, though guided by the word". [Kanta Goel v. B.P. Pathak, (1977) 2 SCC 814] Aharon Barak opines that in certain circumstances this may indicate giving "an unusual and exceptional meaning" to the language and words used. [Aharon Barak, Purposive Interpretation in Law, (Princeton University Press, 2007), at p. 306.]

21. The fundamental rule of interpretation of statute is that the court is not supposed to go beyond the statute unless it is absolutely necessary so to do. Purposive interpretation of any provision of a statute is given if literal interpretation of the same may not serve the purpose or may lead to absurdity. The intention of the legislature is derived by considering the meaning of the words used in the statute, with a view to understand the purpose or object of the enactment, the mischief, and its corresponding remedy that the enactment is designed to actualise.

22. I am of the view that the literal interpretation of the word "Special Court" will not serve the purpose. Section 22(3) provides for the power and jurisdiction of Special Court to be exercised by the Session Court of the Division in absence of any Special Court, whereas section 21 provides for filing of appeal before the Division Bench of the High Court against any judgement, sentence or order passed by a Special Court. If the word "Special Court" is given literal meaning, then appeal against only those judgments and orders which are passed by the Special Courts shall lie before the Division Bench of the High Court and challenge to the judgments and orders passed by Session Courts even in the matter of Scheduled Offences will lie before the regular Bench of the High Court. Thus, the intention of the legislature in promulgating the law that the appeal should lie before to the Division Bench of the High Court in the matter of scheduled offences, will get frustrated. Looking to the gravity and seriousness of the offences under the Schedule of the Act, 2008, the legislature has made specific provision under section 21 of the said Act for filing of appeal before the Division Bench of the High Court to expedite the hearing of such cases. Thus, the word "Special Court" as mentioned in section 21 of the Act, 2008 has to be given purposive construction so that the purpose of the provision as intended by the legislature may be achieved. The intention of the legislature while putting the said

section must have been that a Session Court dealing with any scheduled offence under the Act, 2008 even in absence of issuance of any notification either by the Central Government or by the State Government under Section 11 & 22 respectively, has to be considered as a Special Court for the purpose of Section 21 of the Act, 2008 and in such case an appeal against the judgment, sentence or order including an order refusing anticipatory bail by the Session Court, will lie before the Division Bench of the High Court.

23. In the case in hand, the FIR has been lodged under section 4 & 5 of the Act, 1908 which comes under the scheduled offence of the Act, 2008 and the case is being investigated by the State Agency. The petitioner's application filed for anticipatory bail has been heard by the Additional Sessions Judge-III, Palamau at Daltonganj in absence of any notified Special Court in the Division and the same has been rejected vide impugned order dated 18.07.2024.
24. Considering the facts and circumstances of the case, this Court is of the view that the present anticipatory bail application is not maintainable before the regular court i.e., this Court, rather an appeal will lie under section 21(4) of the Act, 2008 before appropriate Division Bench of this Court.
25. The present anticipatory bail application is thus dismissed as not maintainable.

26. The petitioner is, however, at liberty to prefer an appeal under section 21(4) of the Act, 2008 and while doing so, he may use the certified copies of the FIR of Satbarwa P.S Case No. 33 of 2024 and the impugned order filed with the present anticipatory bail application.

Vikas/Arpit/AFR

(Rajesh Shankar, J.)