

IN THE COURT OF THE METROPOLITAN SESSIONS JUDGE-CUM-
SPL. JUDGE FOR TRIAL OF NIA ACT CASES: AT VIJAYAWADA

PRESENT:- SRI G.DURGAIAH,
IV ADDL.DISTRICT & SESSIONS JUDGE-CUM-
JUDGE, FAMILY COURT, VIJAYAWADA.

FAC.METROPOLITAN SESSIONS JUDGE.

MONDAY, THIS THE 25th DAY OF JANUARY, 2021

E-FILING CASE UNIQUE I.D.No.115929/2020
in S.C.No.39/2020 connected with Rc.No.5/2019/NIA/HYD

Between:-

Vikash Kumar, S/o.Devendra Kumar Yadav,
Hindu, Aged 21 years, R/o.Ward No.1, Gov
Modhan, Mandhan Behror, Alwar, Rajasthan
State, presently working in INS Mysore, Karwar,
Karnataka State-581 364.

....Petitioner/A-12.

AND

State, Rep. by Deputy Superintendent of Police,
National Investigation Agency,
Hyderabad.

....Respondent/Complt.,

This petition is coming on 22.01.2020 before me for hearing in the presence of Sri P.Sreenivasulu, Advocate for the petitioner and of Sri G.Siddiramulu, Public Prosecutor on behalf of the Respondent/NIA through video conference by using Blue Jeans Application at the home office of the Presiding Officer, upon hearing and considering the material on record and the petition having stood over till this day for consideration, this Court delivered the following:-

ORDER

This is the second bail application filed through e-filing by giving advance notice to the learned Public Prosecutor for NIA U/s.437 and 439 of the Criminal Procedure Code, 1973 to enlarge the petitioner/A-12 on bail for the offences punishable U/s.120-B, 201 of the Indian Penal Code, 1860 r/w.sections 17, 18 of the Unlawful Activities (Prevention) Act, 1967 r/w.sections 3, 4 and 5 of the Official Secrets Act, 1923.

2) The brief averments of the petition are that the petitioner/A-12 is a ME1 employee in Navy and he joined two years back and travelled in

different ships as per departmental postings as a cleaner. ME1 denotes the class 4 employee and he was a cleaner in the engine room of the ship. At the entrance of engine chamber, there will be a C.C. camera and except Commanding Officer and Engineers to meet the emergencies while in sailing, others are not allowed to carry anything with them including mobile devices and they have to deposit them at the dockyard before the ship starts sailing. The petitioner is just a cleaner in the engine room which has no secrets. There is absolutely no scope for him to derive or pass on any secret of the engine room as nothing in the engine room is secret to attract the locations of Official Secrets Act. In fact an engine or motor works is fully available in the internet itself. As per charge sheet, the role and involvement of the petitioner is negligible when compared to the gravity of allegations made against him. The petitioner is innocent and he has not committed the alleged offences. He is ready to prove his innocence and also ready to abide by any conditions imposed by the Court. The petitioner is the only earning member of his family. The petitioner was falsely implicated in this case for statistical purpose and he never committed the alleged offences. The petitioner hails from a respectable family and he is working in Indian Navy. The petitioner is a law abiding citizen and he is ready to furnish sureties and also does undertakes to make himself available for interrogation at any time. The petitioner is permanent resident of Rajasthan State and he has fixed abode in Rajasthan State and jumping bail will not arise. There is no prima facie case against the accused and keeping the accused in judicial custody is affecting his fundamental right of liberty. The previous bail application filed by the petitioner in CrI.M.P.52671/2020 was dismissed as per order dated 28.09.2020. Hence, requested to enlarge the petitioner/A-12 on bail.

3) The respondent/NIA filed counter by denying the averments of the petition, contending that case in RC 05/2019/NIA/HYD dated 29.12.2019 U/s.120B & 201 of the IPC, Sections 17 and 18 of the UA (P) Act, 1967 and section 3 of the Official Secrets Act, 1923 had been re-registered by NIA Hyderabad arising out of FIR No.01/2019 dated 16.11.2019 of Counter Intelligence PS, Intelligence Department, Andhra Pradesh police, Vijayawada in compliance of the order of Government of India, Ministry of Home Affairs (CTCR Division), North Block New Delhi, vide F.No. 11011/64/2019/NIA dated 26th December 2019.

Further submitted that on 15.11.2019 at 22.30 hours, Counter Intelligence PS, Andhra Pradesh received credible information that during 2011 to 2019, some un-identified foreign nationals entered into conspiracy with some unidentified persons in places like Visakhapatnam, Mumbai etc., in order to carry out anti-national activities in India. Money is being transferred through various legal/illegal channels to some accounts in the names of certain unknown persons of Visakhapatnam and other places for the purpose of recruiting agents for collection and communication of secret information pertaining to sensitive and vital installations such as defense establishments, space research stations etc., across the country. In furtherance of the conspiracy, Indian citizens are recruited as their agents by offering money and by transferring amounts periodically into their bank accounts in order to obtain crucial information pertaining to Indian war-ships, submarines by committing subversive acts such as spying, taking sensitive photographs, video-graphs of restricted/prohibited areas with a common objective for causing damage and destruction to the properties in India, which are likely to threaten the unity, integrity and sovereignty.

Further submitted that during investigation, 15 accused including 11 employed in the service of Indian Navy, were arrested on different dates and 14 accused persons were charge-sheeted on 15.06.2020 and they are presently lodged in Central Jail Rajahmundry and Special Prison for Women, Rajahmundry under judicial custody. Investigation revealed that the foreign agents/spies used fraudulently obtained Indian mobile numbers to contact the accused through WhatsApp with different online identities. Some of such mobile numbers were provided to the handlers by the accused themselves. The analysis of Internet Protocol (IP) addresses used by the said online handlers received while operating their mobile numbers, WhatsApp, Facebook and Gmail accounts indicate that the same were being operated using ISPs of different foreign countries such as Pakistan, UK, UAE etc. It has also been revealed that the same IP address was used by multiple online handlers at different/same time for using aforesaid social media accounts. Further, the accused/Navy personnel deliberately added the online handlers to their private WhatsApp groups where many other officials of Indian Navy were also there as members. It was done by accused so as to facilitate the online handlers to have easy and regular access to all the confidential and classified information related to Navy establishments being shared on such WhatsApp groups. The foreign agents/spies succeeded to obtain most of the sensitive information related to Indian Navy establishments and posting details of navy officials across the country effortlessly without any suspicion. During investigation Chief Investigating Officer has collected prosecutable evidence against the petitioner/A-12 and filed charge-sheet against him U/s.120B & 201 of The Indian Penal Code 1860, section 18 of The Unlawful Activities (Prevention) Act, 1967 and sections 3, 4 & 5 of The

Official Secrets Act, 1923 on 15.06.2020 and this court has taken cognizance on 16.06.2020 vide SC No. 39/2020 on the said offences.

Further submitted that the case was initially registered on 16.11.2019 and after thorough investigation on the money trail and identifying the depositors & beneficiaries the first arrest was made on 19.12.2019 in the instant case. Investigation revealed that a prima facie case is made out against the petitioner/A-12, hence, petitioner herein was arrested on 19.12.2019 from INS Mysore, Karwar, Karnataka in the presence of two navy officials. Subsequently, his mobile phones along with other materials/documents required for the investigation were seized from his office premises and personnel possession of the petitioner/A-12. The petitioner/A-12 and along with 12 other accused was remanded to police custody of NIA from 18.01.2020 to 22.01.2020 by this Court. During custodial examination, he admitted his role in the instant case and voluntarily disclosed that during May, 2019, he came in contact online handler 'Ashi Rajput' over Facebook. Later, both of them switched to WhatsApp conversation and the petitioner/A-12 shared vital information with her pertaining to location/movement of Indian Navy ships/submarines. During June, 2019, the petitioner/A-12 came in contact with another handler 'Diya Gupta' through WhatsApp from her number 9714572065. The said 'Diya Gupta' consistently tried to elicit sensitive information from accused about location/movement of Indian Navy ships/submarines, due to which accused got annoyed and blocked her over WhatsApp. Further, A-12 made voluntarily disclosure about his social media accounts Facebook & WhatsApp through which he was in contact with his foreign agents/spies. However, he stated that he used to delete the WhatsApp chats with his handlers, hence, no chats could be retrieved from his mobile phone, which establishes A-12 intention. The

scrutiny of expert opinion on his mobile phones reveals that the petitioner demanded money from 'Ashi Rajput' and accordingly, Rs 5001/- was deposited into his bank account on 02.07.2019. Photos and videos of ships are found in his mobile phone. WhatsApp chats and sharing of videos related to submarine and other information over WhatsApp with suspected persons namely Pooja Yadav and Pawan Yadav are also found. Investigation revealed that the petitioner/A-12 communicated with his online handlers about number of ships deputed along Pakistan sea border after Pulwama attack (14.02.2019) including his ship. The Headquarters WNC also confirmed the fact.

Further submitted that the petitioner/A-12 secretly shared a lot of classified and sensitive information related to Navy establishment with said 'Ashi Rajput and Diya Gupta regarding locations/ movements of numerous Indian Navy ships/submarines over WhatsApp for monetary benefits comprising with national security. Petitioner/A-12 received money of Rs. 5,001/- through his ICICI A/C No. 255201503994 from said handlers Ashi Rajput and the amount was deposited by arrested/charge-sheeted accused Mohd Haroon Lakdawala (A-5) who was in direct link with Pakistan agents/spies Ali @ Akbar, Rizwan and other agents/spies. FSL examination report of mobile phones & SIM card seized from A-12 revealed that he deliberately deleted his WhatsApp incriminating chat with his handler to avoid suspicion on his illegal activities. The petitioner/A-12 deliberately passed on the locations/ movements & nature of duty of Indian Navy ships/ submarines to his foreign online handlers 'Ashi Rajput & Diya Gupta through end-to-end encrypted messaging services WhatsApp. Such information can be used for terrorist activities in India by any alien country. In spite of knowing it, the petitioner/A-12 kept on sharing all the sensitive and strategic information with foreign

agents/spies for monetary benefits and thereby compromised with national security. Further, A-12 deliberately hid the fact of his conversation with said foreign agents/spies, from their superior officers. This clearly shows the intention of petitioner and his role in the commission of offence and culpability in knowingly facilitating the preparation for commission of a terrorist act.

Further submitted that the petitioner/A-12 as investigation revealed that awareness programmes regarding prohibition on sharing of sensitive and classified information and its consequences thereafter were conducted from time to time by the Executive Officer and Divisional Officer of Indian Navy to sensitize the navy personnel/sailors. These programmes were attended by all the sailors present on board. Do's & Don'ts and SOPs for usage of smart phones are promulgated by the concerned ships/submarines, which are disseminated to sailors at regular intervals. It indicates that the petitioner/A-12 shared such sensitive information voluntarily, intentionally and knowingly to the foreign agents/spies knowing the consequences. However, the petitioner/A-12 did not heed the security instructions. The petitioner / A-12 undergone basic, ship and professional trainings, specialized course/trainings. Being trained soldier his prime duty was to ensure safety, security of ships/submarines where he was posted from the enemy countries and terrorists whereas the petitioner/A-12 facilitated the foreign powers /enemy countries to carryout terrorist acts by communicating the updated sensitive information about the location/movements of his ship as well as other ships which was obtained from his navy friends/batch-mates. He deleted WhatsApp chats with his handlers to avoid detection of his anti-national activities and also to hide his identity over network and culpability in crime, if he was apprehended.

Further submitted that the petitioner/A-12 is active on social media, hence, online handler/foreign spy Ashi Rajput @ Harish befriended on WhatsApp and recruited him as his informer. The spy arranged money to Petitioner/A-12, who used to share classified official secrets of Indian Navy establishments through arrested charge-sheeted accused Mohd Haroon Lakdawala (A-5) who is having direct link with Pak ISI agents Ali @ Akbar and Rizwan and others. The petitioner/A-12 deliberately passed on the confidential and sensitive information regarding Indian Naval establishments to foreign agent/spy through end-to-end encrypted messaging services WhatsApp and not through standard voice calls or text messages despite knowing the fact that it is an offence and detrimental to the national interest. On obtaining such information Pak based terrorist organizations have carried out terrorist attacks at several vital installations in India. Sensational among them include the attack on Indian Parliament (2001), J&K Assembly (2001), Mumbai Taj Hotel and other places (2008), Pathankot Airbase (2016), Uri Army Brigade (2016). A common trend in all such attacks has been that Pakistani Agencies (like ISI) had played a key role in tandem with the terrorist cadres in conducting reconnaissance at the vital installation before undertaking the actual attacks. In this case, it can be implied that the main purpose of conducting reconnaissance on strategic Naval Warship and establishments is to assist the proliferating terrorist groups in Pakistan, like LeT, JeM to plan terrorist attacks. The petitioner/A-12 is a trained soldier of disciplined force i.e. Indian Navy and he is well aware of the fact that sharing photographs, videos and other confidential and sensitive information with any foreign national is not only a punishable offence but also very much detrimental to the security and sovereignty of the country. The accused was well-aware that the information clandestinely passed on

by him to his associates based in foreign countries can very well be used by any alien or enemy country to gain strategic military advantage over India and even plan & launch surprise and ghastly terror attacks on India that might adversely attack the sovereignty of the country.

Further submitted that as per the decision of the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in the case of **State represented by National Investigation Agency through Dy. Superintendent of Police, Hyderabad vs. Saddam Hussain** vide order dt.7.11.2016 in CrI.A.791 and 792 of 2016 held that Sections 437 and 438 of the Criminal Procedure Code have no application for the offence U/s.43-D of the Unlawful Activities (Prevention) Act, 1967. Hence, requested to dismiss the petition.

4) Heard the learned counsel for petitioner/A-12 and the learned Public Prosecutor for respondent/NIA through video conference by using Blue Jeans Application at the Court premises.

5) The point for consideration is:

“Whether there are changed circumstances and law from the date of previous bail order in CrI.M.P.52671/2020 dated 28.09.2020, till the date of filing of this petition to grant bail to the petitioner/A-12?”

POINT:

6) The learned counsel for petitioner submitted that the petitioner / A-12 is just a cleaner in the engine room which has no secrets. There is no scope for him to derive or pass any secret of the engine room. He cannot enter other departments. Investigation is completed, charge sheet is filed and it reveals that only one money transaction of Rs.6,001/- derived by A-12 unofficially and nothing else. All these facts were not

brought to the notice of this Court in the previous bail application. Hence, requested to consider the same and enlarged the accused on bail and further contended that there is no prima facie material to connect the accused for the above offences. Hence, the petitioner is entitled for bail. To substantiate his plea, he also placed reliance on the following decisions:

1. In the case of **Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra** and another in Appeal (Crl.) No.523 /2005 dated 07.04.2005.
2. In the case of **State of Kerala Vs. Raneef** in Crl.Appeal No.3/2011 dated 03.01.2011.
3. In the case of **Arup Bhuyan Vs. State of Assam** in Crl.Appeal No.889/2007 dated 03.01.2011.

7) The learned Public Prosecutor for NIA submitted that the petitioner previously filed bail application in Crl.M.P.52671/2020 and the same was dismissed on merits. After completion of investigation, charge sheet also filed in this case. Subsequent to filing charge sheet only, the previous bail application and this bail application were filed. The petitioner filed this petition without explaining any change in the circumstances and law from the date of previous bail. Therefore, the petition is not maintainable and liable to be dismissed.

8) As seen from the record, it reveals that in the previous bail application the entire material placed before the Court along with charge sheet, this Court came to the conclusion that the material available on record reveals that there is a prima facie material to believe that the allegations against the petitioner/A-12 are punishable U/s.120-B, 201 IPC and U/s.18 of the Unlawful Activities (Prevention) Act, 1967 are true and correct and the role of the petitioner also discussed in the previous bail order. Already Court took cognizance of the above offences basing on

the material available on record. Once this Court gave finding in the previous bail order, the petitioner cannot ask this Court to sit over the decision of the same Court. If the petitioner aggrieved by the order of this Court in Crl.M.P.52671/2020 dated 28.09.2020, he is at liberty to challenge the same in appropriate forum.

9) As seen from the petition, the petitioner has not mentioned any change in the circumstances and law from the date of previous bail order, till the date of filing of this petition. It is not the case of the petitioner that the petitioner is not a Navy Employee and he did not receive any amount from any person as alleged by the prosecution. The record prima facie reveals that he received amount from unknown persons. When the material on record prima facie reveals the allegations against the petitioner are true and correct, section 43(D) of U.A.(P) Act, 1967 takes away the discretion of the Court to grant bail to the petitioner/A-12.

10) The learned counsel for petitioner further contended that the petitioner has been in jail without taking up trial. It is true, due to COVID-19 and circulars issued by the Hon'ble High Court of A.P. from time to time, trial could not be conducted. The record further reveals that investigation in the connected case in Rc.No.5/2019/NIA/HYD against A-21 which was traced subsequent to filing charge sheet in this case has been still pending. The trial in this case will be commenced shortly depending upon the circulars issued by the Hon'ble High Court of Andhra Pradesh. There is no regular Presiding Officer to this Court since July, 2020. Due to the above reasons, trial not yet commenced.

11) On perusal of the entire record, I find except remand period, there is no change in the circumstances and law from the date of earlier bail order in Crl.M.P.52671/2020 till the date of filing of this petition. The law is

well settled by the Hon'ble Apex Court in the case of **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Another** reported in AIR **2005 SC 921** that *"though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete."* As stated above without any change in the circumstances and law, the petitioner filed this petition. The petitioner did not assign any changed circumstances and law from the date of previous bail order in CrI.M.P.52671/2020 dated 28.09.2020, till the date of filing of this petition. I have also perused the decisions relied upon by the learned counsel for the petitioner/A-12. With a great respect to the aforesaid decisions, I am of the opinion that those decisions are not applicable to the facts of the instant case at this stage. Therefore, I do not find there are no change circumstances and law from the date of previous bail order, till the date of filing of this petition, as such, this petition is not maintainable on the same grounds which are urged in the previous bail application and liable to be dismissed. Accordingly, the point is answered against the petitioner/A-12.

12) In the result, the petition is dismissed. Upload the order in the District Court Website. Intimate the same to the learned counsel for the petitioner/A-12 and the learned Public Prosecutor for NIA to their WhatsApp mobile numbers/E-mail I.Ds.

Dictated to the Grade-I Stenographer of this Court, transcribed by him, corrected and pronounced by me in open Court through Blue Jeans Application, on this the 25th day of January, 2021.



IV ADDL.DISTRICT & SESSIONS JUDGE-CUM-
JUDGE, FAMILY COURT, VIJAYAWADA.
FAC.METROPOLITAN SESSIONS JUDGE-CUM-
SPL. JUDGE FOR TRIAL OF NIA ACT CASES,
VIJAYAWADA.