

GAHC010001242017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./155/2020

The National Investigation Agency

Through the Superintendent of Police, NIA,

Branch Office: Guwahati, Assam,

Ministry of Home Affairs, Govt. of India

.....Appellant

-Versus-

1. *Shri. Tapitu @ Tapi (A-13),*

Son of Yichutu, a resident of

Village-Phor, P.S. Meluri,

District- Phek, Nagaland

2. *Shri Meghazu,*

Son of Yichutu, a resident of

Phor Village, District- Phek, Nagaland.

..... Respondents

Advocate for the Appellant : Mr. DK Das, Senior counsel.

Ms. GD Choudhury.

Advocate for the respondents : None

Date of hearing & Judgment : 28.02.2023

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER(ORAL)

(Michael Zothankhuma, J)

Heard Mr. DK Das, learned Senior counsel assisted by Ms. GD Choudhury, learned counsel for the appellant.

2. No one appears for the respondent. It is noticed that vide order dated 10.11.2021, this Court had held that since the respondent was already served notice, no further notice was required to be sent to him.

3. The present appeal has been filed against the impugned order dated 01.05.2017 passed by the learned Special Judge, NIA Nagaland, Dimapur in Bail Application No. 29/2017, granting bail to the respondent/accused, namely, Shri Tapitu @ Tapi (A-13), son of Yichutu, resident of village Phor, P.S. Melluri, District-Phek, Nagaland.

4. The learned Senior Counsel for the appellant submits that the learned Trial Court could not have granted bail to the respondent/accused, in view of Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 (herein after referred to as the "UA(P) Act, 1967"), inasmuch as, an accused person can only be released on bail, if the Court is of the opinion that there are reasonable grounds for believing that the information against such person is *prima facie* untrue. He submits that the learned Trial Court has however granted bail, only after considering the statement of the respondent/accused made under Section 161 Cr.PC and has decided the bail application of the respondent/accused in a cryptic manner. He

accordingly submits that the bail granted to the respondent/accused should be cancelled. He also submits that the learned Trial court, while granting bail to the respondent/accused had stated that the allegation of conspiracy under Sections 120B IPC and 18 UA(P) Act had not been *prima facie* made out, which would prejudice the case of the appellant during the trial proceedings. He also submits that the observation made by the learned Trial court in the impugned order dated 01.05.2017 "whether the prosecution can secure the conviction of the accused for being a member of a terrorist organization under Section 20 of the UA(P) Act after conclusion of the trial," could also prejudice to the appellant during the trial proceedings. He submits that the said observations should be struck off from the impugned order dated 01.05.2017.

5. The challenge made in this appeal against the impugned order dated 01.05.2017 is that bail could not have been granted to the respondent/accused, who belongs to the NSCN(K), a banned organization under the Sl. No. 39 of the 1st Schedule to the UA(P) Act, 1967.

6. The case against the respondent/accused has its genesis from the FIR dated 26.03.2015, which states that on 26.03.2015, at around 7:00 to 8:00 am, a telephonic information had been received from the SDPO Kohima, stating that a firing incident had taken place at I.G. stadium, Kohima. Thereafter Police officials had rushed to the spot for verification, where it was ascertained that 6 to 7 personnels of Bravo company of the 19th Assam Rifles, who were waiting for a bus near the gate at I.G. stadium, were shot at by 3-4 persons, who had alighted from a silver coloured vehicle (Alto or Maruti, number unknown), with AK-47 rifles and

pistols and fled the scene. During enquiry, empty AK-47 shell, 9 mm shells and 1 AK bullet head and 9mm bullet head were recovered from the spot. 4 (four) of the 19th Assam Rifle personnels were injured in the incident. The allegations against the respondent/accused was that he had supplied arms to the NSCN(K).

7. Pursuant to the FIR dated 26.03.2015, a case was registered. Thereafter, the appellant filed charge-sheet before the Court of the Special Judge, NIA Nagaland, Dimapur on 23.11.2015. The respondent/accused was thereafter arrested on 18.12.2015. A supplementary charge-sheet was filed by the appellant on 14.06.2016, wherein the respondent was named as Accused No. 13 (A-13).

8. The respondent/accused thereafter filed an application for bail vide Bail Application No. 29/2017. The same was allowed vide the impugned order dated 01.05.2017.

9. Section 43(D)5 of the UA(P) Act states as follows:-

“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 released.

Provided that such accused person shall not 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.”

10. On a perusal of the impugned order, we find that the learned Trial Court had come to an opinion that the allegation of conspiracy under Sections 120B IPC and 18 UA(P) Act was not *prima facie* made out against the respondent/accused. It also made an observation as to whether the

prosecution could secure the conviction of the respondent for being a member of a terrorist organization under Section 20 of the UA(P) Act, 1967 at the conclusion of trial. Thereafter bail was granted to the respondent.

11. As stated above, the challenge to the impugned order is on the ground that the learned Trial Court had decided the bail application, after considering the statement of the respondent/accused made under Section 161 Cr.PC only and that the impugned order had been made in a cryptic manner.

12. On considering the impugned order, there is nothing to show that the impugned order has been made without considering the charge-sheet or the supplementary charge-sheet or that it had been made only after considering the statement made by the respondent under Section 161 Cr.PC. The impugned order is not cryptic, inasmuch as, reasons for granting bail has been given. The above being said, we also find that 5 years and 9 months have elapsed from the date of grant of bail to the respondent/accused.

13. This Court vide order dated 13.12.2022 had directed the learned Senior Counsel to obtain instructions, as to whether the respondent/accused was regularly appearing and facing trial before the learned Trial Court.

14. Mr. DK Das, learned Senior Counsel has submitted various orders passed by the learned Trial Court, which shows that the respondent/accused has been regularly appearing and facing trial before the learned Trial Court.

15. In view of the above facts, we are of the view that no case for cancellation of bail has been made out. The application for cancellation of bail is accordingly rejected. However, keeping in view the apprehension of the appellant, the observations of the learned Trial Court made in the impugned order, which is to the effect that the "*allegation for conspiracy under Sections 120B IPC and 18 UA(P) Act is not prima facie made out*" and "*whether the prosecution can secure the conviction of the accused for being a member of a terrorist organization under Section 20 of the UA(P) Act after the conclusion of the trial*" should not be regarded by the learned Trial Court as findings made on the merits of the case at the time of disposal of the main case.

16. The Criminal Appeal stands disposed of accordingly.

JUDGE

JUDGE

Comparing Assistant