GAHC010001432023

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

Case No. : Bail Appln./23/2023

ABU SHAMA AHMED
S/O- LT. MIR ALI
R/O- WARD NO.8
BARPETA ROAD
P.S. BARPETA ROAD
DIST.- BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY P.P.
ASSAM

Advocate for : MR S BORTHAKUR
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

06.01.2023.

Heard Mr. S. Borthakur, learned counsel for the accused. Also heard Mr. M. Phukan, learned P.P., Assam appearing for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, is preferred by accused, namely, Abu Shama Ahmed, who has been languishing in jail hazoot since 22.09.2022, in connection with the SOU P.S. Case No.02/2022, under sections 120(B)/124(A)/ 153A/353 of the IPC, with added Section 18 of the UA(P) Act, for granting bail.

3. It is to be noted here that the SOU P.S. Case No.02/2022, has been registered on the basis of an FIR lodged by Ms. Pallabi Majumdar, APS, Addl. S.P., Special Branch, Assam at Kahilipara on 21.09.2022, with the Officer-in-Charge, Special Operation Unit P.S., to the effect that it has been found from the inputs received from reliable sources that Popular Front of India (PFI) with its State office in Guwahati, is making all round effort to create communal tension throughout the State of Assam and the members trying to whip communal passion and sentiments of the religious minority community by criticizing the policy of the Government, with communal overtone, including Citizenship Amendment Act (CAA), National Registration Certificate (NRC), D-Voters, new State Education Policy, Cattle Protection Act, extention of AFSPA, TET Examination, Agnipath Scheme, Eviction of encroachers from the Govt. land and termed these actions of the Government as direct attacks upon the Muslim Community and they also used to obstruct the Government servants in performing their duty by using force, in Bhalukdubi Old Science Academy Hall, Goalpara on 08.09.2018, violating the prohibitory order under Section 144 of the CrPC, and on 17.02.2022, during celebration of the Foundation Day, the Baksa District unit of the PFI raised inflammatory slogans by violating the prohibitory order under Section 144 of the CrPC and to divide the society on religious line and obstructing the Government in executing its policies, and they use cyber space to provoke the people for

defying the Government order and the PFI also expressed solidarity with their National Executive in the campaign "Save The Republic Programme" on 26.01.2022 to 15.08.2022 and they provoked people against the Government and tried to formant and spread mistrust among public, against the Government and they are also misleading the people by taking up the issues, which occurred outside the State and mis-campaigning through social media tools like twitter, e-postering, organizing webinars through ZOOM or Google Meet and the same includes highlighting of arrest made in UP, Bihar, Delhi and challenging the Karnataka High Court verdict on Hijab issue, Bilkis Bano Issue, Court verdict on the Gyanvapi Mosque, criticizing the Supreme Court verdict on the Ram Janambhoomi-Babri Masjid Issue, abrogation of Article 370 of the Constitution of India and they are also organizing protest on such issued in communily sensitive areas like Badarpur, Karimganj, Barpeta, Baksa, Kamrup (R), Goalpara and Kamrup (M) District, etc. and also trying to spread communal feelings in Muslim dominated pockets of Barpeta, Goalpara and Badarpur, by whipping their sentiments on the issue of communal violence, Ram Navami and Hanuman Jayanti, that took place in Rajasthan and (1) Abu Sama Ahmed, (2) Robiyool Hussain, (3) Nazrul Islam Bhuyan, (4) Aminul Hoque, (5) Hafiz Rafiqool Islam, (6) Abdul Razzak, (7) Farhad Ali Ahmed, (8) Faizur Rahman, (9) Bazlul Karim, (10) Khalilur Rahman, (11) Mufti Rahman Ullah, (12) Dr. Minarul Sheikh and some others actively involved in the above noted conspiracy of propagating anti-establishment propaganda with communal overtone, with a view to polarizing the society on religious line and they pose a serious threat to the internal security of India.

4. Mr. S. Borthakur, learned counsel for the accused submits that the accused was arrested on 22.09.2022, and since then he has been languishing

in jail hazoot and that the mandatory period of detention is over on 21.12.2022, and thereafter, the accused has filed an application for bail before the learned Court below, but the learned Court below has dismissed the same. Instead, the learned Court below has extended the period of detention, on the basis of a prayer made by the investigating agency.

5. Mr. Borthakur further submits that since the period of 90 days is over on 21.12.2022, and since no charge sheet has been submitted by the investigating agency and since on that date, no prayer of extension of period of detention has been made, subsequent extension of the period of investigation made vide order dated 22.12.2022, by the learned CJM, Kamrup (M) at Guwahati is illegal, as he has no jurisdiction to extend the period of investigation, which is the function of Special Judge under the UA(P) Act and no notice was issued to the accused and the accused is also not produced before the Court and the application was not routed through the Public Prosecutor and no report was called for from the Public Prosecutor, and the said order is set aside by this Court on 06.01.2023, in Crl. Petition No.5/2023 and as such, the accused is entitled to default bail and therefore, it is contended to allow the petition.

6. Mr. S. Borthakur, learned counsel for the accused has also referred the following case laws of the Hon'ble Supreme Court, in support of his submission:

(1) **Sadique and others vs. State of Madhya Pradesh**, reported in **(2022) 6 SCC 339**,
(2) **Hitendra Vishnu Thakur and others vs. State of Maharashtra and others**, reported in **(1994) 4 SCC 602**,
(3) **Jigar @ Jimmy Pravinchandra Adatiya vs. State of Gujarat**, reported in **2022 SCC Online SC 1290**,

(4) **Bikramjit Singh vs. State of Punjab**, reported in (2020) **10 SCC 616 and (5)**.

7. On the other hand Mr. M. Phukan, learned P.P., Assam, has opposed the petition on the ground that the offences are serious in nature and investigation is still going on. But, Mr. Phukan fairly submits that while making the prayer for extension before the learned Court below, the accused were not present and no notice was issued to the accused and he was also not produced before the Court and no report was submitted by the Public Prosecutor to that effect.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through petition and the documents placed on record. I have perused the judgment and order dated 06.01.2023, passed in Crl. Petition No.5/2023, wherein the order dated 22.12.2022, by which the learned CJM, Kamrup (M) at Guwahati, has extended the period of detention of the accused, is held to be illegal and without jurisdiction and accordingly, set aside and quashed.

9. Since the period of 90 days is over on 21.12.2022 and since on that date, the I.O. has failed to submit charge sheet and also failed to make prayer for extension of the period of investigation, the accused is entitled to default bail, in view of the law laid down by Hon'ble Supreme Court in the case of **Sadique and others (Supra),** as well as other case laws, referred by Mr. Borthakur, which supports his version.

10. Under the facts and circumstances, discussed here in above, this Court is of the considered opinion that the accused is entitled to default bail and accordingly, it is provided that on furnishing a bond of Rs. 50,000/ (Rupees

fifty thousand) with one surety of like amount, to the satisfaction of learned Special Judge, Kamrup (M) at Guwahati, under the UA(P) Act, the accused shall be enlarged on bail. This privilege is however subject to the following conditions that:-

(i) He shall not leave the jurisdiction of learned Special Judge, Kamrup (M) at Guwahati, under the UA(P) Act, without prior permission;

(ii) He shall surrender his Passport, if any, before the I.O. within a week from today;

(iii) He shall appear before the I.O., as and when directed, and

(iv) He shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

11. In terms of above this B.A. stands disposed of.

12. The Case Diary be returned.

JUDGE

Comparing Assistant