

GAHC010010762023



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

Case No. : Bail Appln./187/2023

DAORAO DEKHREB NARZARY
S/O LT. MAHESWAR NARZARY
R/O VILL- MAIBONG,
NWGWR,P.O. AND P.S. KOKRAJHAR, DIST. KOKRAJHAR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 22-02-2023

Heard Mr. A.M. Bora, learned senior counsel, assisted by Mr. K. Baidya, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, the learned Addl. P.P. for the State.

2. The petitioner, namely, Daorao Dekhreb Narzary, who was arrested on

07.01.2023 in connection with Kokrajhar P.S. Case No. 9/2023, under sections 120B/121/121A/122/124A IPC read with sections 16/18/18A/18B/19/20/21 of the Unlawful Activities (Prevention) Act, 1967 read with section 66 of the I.T. Act, has prayed for regular bail under section 439 Cr.P.C.

3. The learned senior counsel for the petitioner has submitted that the petitioner is a social worker and a political leader and in the past, he had held many prominent public posts in Bodoland Territorial Council (BTC for short), viz., (i) Executive Member of BTC during 1993; (ii) Chairman, Central Selection Board, Kokrajhar during 2012-13; (iii) Chairman, Kokrajhar Development Authority during 2013-18. He was also the President of Bodoland Janajati Suraksha Mancha. However, as he is now in opposition and has raised his voice on many issues relating to BTC, several persons from the present political front in power had conspired together and lodged an FIR to project the petitioner as terrorist, conspiring to create a terrorist gang to commit terrorist activity and to threaten the unity and integrity of the Country, which is all false and concocted. It was submitted that in furtherance to the conspiracy, while some arms was recovered from a particular accused, by virtue of statements attributed through other co-accused, the petitioner is being falsely projected to be involved in actively participating in conspiracy of terrorist activity. It is submitted that the police is acting mechanically at the dictates of politicians, which is evident from the fact that although the provision of Section 124A IPC has been struck down, the petitioner is accused of committing offence under the said non-existing provision.

4. By referring to the medical documents annexed to this application, it is submitted that the petitioner is a senior citizen of about 63 years of age and has

multiple ailments including diabetes, hypertension, serious eye-sight problems. It is submitted that the petitioner has severe respiratory problem relatable to post Covid-19 effect. It is also submitted that on 17.02.2023, the health condition of the petitioner had deteriorated and had to be hospitalized and eventually he was diagnosed of multiple gall-bladder stone as well as renal cyst and his heart rate was found to be 48 bpm, which is very low and therefore, the petitioner urgently needs to go outside the State for better treatment and well being.

5. The learned Addl. P.P. has produced the case diary and has opposed the prayer for bail.

6. On a perusal of the case diary, it appears that in course of investigation, some social media platforms are found to be used by certain persons to propagate their criminal conspiracy and incite people to use criminal force as these persons including the petitioner are extremely dissatisfied by the BTR Accord. The police and investigating agencies have been able to recover a huge cache of arms and ammunitions, which include (i) one AK Rifle; (ii) one AK rifle magazine loaded with 30 nos. of 7.62 mm live ammunitions; (iii) one M-16 rifle (iv) one M-16 rifle magazine loaded with 9 nos. of 5.56 mm live ammunitions; (v) 96 nos. of 7.62 mm live ammunitions. Witnesses examined by the I.O. have stated that the petitioner used to talk of waging war against the Country by his statement made before people on the ground that a section of Bodo people were betrayed by the present Government. There is strong suspicion against the petitioner of taking active part to start a fresh/new revolution as he was not happy with the BTR Accord. The involvement of influential persons including the petitioner in the conspiracy cannot be ruled out

at this nascent stage of investigation because the arms and ammunitions, referred to above were recovered and seized from the house of an Ex-MLA.

7. The learned senior counsel for the petitioner has strongly argued that in view of the recent judgments of the Supreme Court of India, conviction cannot be made on the basis of the statement made by a co-accused and that the said principle would be attracted in case of a bail application made under Section 439 Cr.P.C. We have no quarrel to the said ratio. However, in this case, the investigation is at a nascent stage and the I.O. still has time prescribed under section 167(2) CrPC to submit charge-sheet. Therefore, at this stage when the investigation is still incomplete, the petitioner cannot be enlarged on bail on the principle which is to be taken into consideration at the time of trial.

8. In respect of the submissions made with regard to the provision of Section 124A IPC, the Court is of the considered opinion that the investigation and/or arrest of the petitioner shall not stand vitiated merely because along with other sections, the petitioner is accused of committing offence under Section 124A IPC. In the case of *S.G. Vombatkere v. Union of India*, 2022 STPL 6690 SC [Writ Petition(C) No. 682 of 2021 with other cases, decided on 11-05-2022], the Supreme Court of India had made the following observations, which is quoted below:-

5. *In view of the above, it is clear that the Union of India agrees with the prima facie opinion expressed by this Court that the rigors of Section 124A of IPC is not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime. In light of the same, the Union of India may reconsider the aforesaid provision of law.*

6. *This Court is cognizant of security interests and integrity of the State on one hand, and the civil liberties of citizens on the other. There is a requirement to balance both sets of considerations, which is a difficult exercise. The case of the*

petitioners is that this provision of law dates back to 1898, and pre-dates the Constitution itself, and is being misused. The Attorney General had also, on an earlier date of hearing, given some instances of glaring misuse of this provision, like in the case of recital of the Hanuman Chalisa.

7. Therefore, we expect that, till the re-examination of the provision is complete, it will be appropriate not to continue the usage of the aforesaid provision of law by the Governments.

8. In view of the clear stand taken by the Union of India, we deem it appropriate to pass the following order in the interest of justice:

a. The interim stay granted in W.P.(Crl.) No.217/2021 along with W.P.(Crl.) No.216/2021 vide order dated 31.05.2021 shall continue to operate till further orders.

b. We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration.

c. If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India.

d. All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused.

e. In addition to the above, the Union of India shall be at liberty to issue the Directive as proposed and placed before us, to the State Governments/Union Territories to prevent any misuse of Section 124A of IPC.

f. The above directions may continue till further orders are passed.

9. Thus, as per the case diary, the investigation is at its nascent stage and several angle of conspiracy is being investigated, in the interest of investigation, the Court is disinclined to release the petitioner, namely, Daorao Dekhreb Narzary on bail at this stage. The prayer for bail is rejected at this stage.

10. Nonetheless, owing to the projection that the petitioner is not keeping

good health, the Jailor of the concerned jail where the petitioner is currently lodged shall do the needful. Accordingly, the petitioner is at liberty to move the jurisdictional Magistrate for passing appropriate orders for the purpose of giving proper medical care to the petitioner.

11. Case diary is returned.

JUDGE

Comparing Assistant