

GAHC010016572023



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

Case No. : Bail Appln./311/2023

AHMED ALI
S/O HAFIZ UDDIN
R/O VILL- SAHARIAGAON
P.O. SAHARIAGAON,
P.S. MOIRABARI
DIST. MORIGAON, ASSAM
PIN-782126

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : F K R AHMED
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

16.03.2023.

Heard Mr. F.K.R. Ahmed, learned counsel for the accused. Also heard Mr. B. Sarma, learned Addl. P.P., Assam, for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, is preferred by accused, namely, Ahmed Ali, who is languishing in jail hazot since

14.08.2022, in connection with the Moirabari P.S. Case No.156/2022 (corresponding to G.R. Case No.1492/2022), under Sections 17/19/20/21/39/40 of the UA(P) Act, with added Sections 120(B)/201/121/121(A) of the IPC, for grant of bail.

3. The afore-noted case has been registered on the basis of an FIR, lodged by S.I. Jitendra Basumatary, to the effect that acting on a tip off that a person by name Mustafa @ Mufti Mustafa who is an important financial conduit of the recently busted Ansarullah Bangla Team (ABT) Module in India, which is linked with Al Qaida in Indian Subcontinent (AQIS), which is a Terrorist Organization as per the UAP Act.

4. During the course of investigation, it is revealed that the FIR named accused Mustafa being funded through the proceeds from unlawful activities and present accused, Ahmed Ali is found as supporter of the ABT module in Assam.

5. Mr. Ahmed, learned counsel for the accused submits that this is the second bail petition filed by the accused and earlier petition was dismissed by this court after perusing the case diary vide order dated 21.12.2022. Mr. Ahmed further submits that the ground for filing this second petition is the length of detention and that no incriminating materials were recovered and seized from his possession and that there is no material to indicate that he is a member of the banned organization and he is ready to cooperate with the investigating agency and he is behind the bar for last 210 days and therefore, it is contended to allow the petition.

6. On the other hand, Mr. B. Sarma, learned Addl. P.P., Assam, has vehemently opposed the petition on the ground that the I.O. has collected

sufficient incriminating materials against the accused and that investigation of the case is already completed and charge sheet has been laid before the learned court below and the case is pending for consideration of charge and that there is possibility of misusing the liberty if bail is granted at this stage and therefore, Mr. Sarma contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record of the learned court below, and the status report with the assistance of Mr. Sarma, learned Addl. P.P., Assam.

8. It appears from the status report, received from the learned court below that that after completion of investigation the I.O. has already laid charge sheet against 9 accused persons, including the present accused, under Sections 120(B)/201/121/121(A) of the IPC, read with 18/18(A)/18(B)/ 19/20/38/39/40 of the UA(P) Act, and the learned court below has taken cognizance of the same and the case is pending now for furnishing copies on 20.03.2023.

9. The petition having been opposed by the learned Addl. P.P., there arises the requirement under Section 43D(5) of the UA(P), Act, of satisfying the court that the allegation in the FIR are not true. To a pointed query of this court, as to how the accused would satisfy the requirement of the said section, Mr. Ahmed the learned counsel for the accused submits that the requirement under section 43D(5) of the UA(P), is not stringent like section 37 of the NDPS Act, and that the materials collected against the accused are no sufficient to show his involvement with the offence alleged and no incriminating materials were recovered and seized from his possession.

10. But, having considered the submission of Mr. Ahmed, the learned counsel

for the accused, in the light of material collected against the accused in the charge sheet, the same left this court unimpressed. There are sufficient materials against the accused and at this stage it is difficult to opine as to whether the same will be sufficient or not to establish charge against the accused. The mobile phone and pen drive, allegedly seized from his possession, and the contents thereof indicates his link with co-accused Mustafa @Mufti Mustafa and his activities, who act as a financial conduit of Ansarul Bangla Team module in India that has linked with Al Qaida in Indian Sub-Continent.

11. Since charge sheet has been submitted against the accused before the learned court below, it cannot be said that the allegation in the FIR are not true. The accused has failed to satisfy the court that the materials presented along with the charge sheet do not make out reasonable grounds for believing that the accusation against him is prima-facie true.

12. In view of the aforesaid facts and circumstances, and also considering the gravity of the offence and the possibility of tampering the witnesses and misusing the liberty, this Court is of the view that this is not a proper stage to grant the privilege of bail under Section 439 of the Cr.P.C. and therefore, this petition stands dismissed.

13. However, the learned Court below is directed to expedite the trial and conclude the same within earliest possible time, without being influenced by any of the observation made herein above. If necessary, the learned court below shall take recourse to the provision of Section 309(1) of the Cr.P.C.

JUDGE

Comparing Assistant