

GAHC010017442023



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

Case No. : Bail Appln./321/2023

ZANAB KHAN AND ANR.
S/O SIRAJ AHAMAD,
R/O VILL- SANGALYUMPHAM
CHERAPUR MAKHA, P.O. AND P.S. LEIKAI, IN THE DIST. OF THOUBAL,
STATE- MANIPUR, PIN-795001.

2: HABIBUR RAHMAN
S/O NUR JAMAN
RESIDENT OF VILL- SANGALYUMPHAM CHERAPUR MAKHA
P.O. AND P.S. LEIKAI
IN THE DISTRICT OF THOUBAL
STATE- MANIPUR
PIN-79500

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE PP, ASSAM

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST (PCCF)
ASSAM
AARANYA BHAWAN
BATAHGULI
PANJABARI ROAD
GUWAHATI-781037

3:THE ASSISTANT CONSERVATOR OF FOREST
I/C RANGE FOREST OFFICER
CENTRAL RANGE
KARBI-ANGLONG
EAST DIVISION
MANJA
ASSAM

PIN-78246

Advocate for the Petitioner : M K BORAH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

O R D E R

09.03.2023.

Heard Mr. M.K. Borah, learned counsel for the accused and also heard Mr. D. Gogoi, learned Special P.P. for the Forest Department representing the State respondent.

This bail application, under section 439 Cr.P.C., is preferred by accused Md. Zanak Khan and Habibur Rahman, who are languishing in jail since 12.04.2022, in connection with Ref, Case No. CR/01 of 2022-2023, under section 51 of the Wildlife (Protection) Act, 1972, for grant of bail.

The allegations against the present accused are that on 12.04.2022, ASI Jiten Gogoi of Dillai PS has found one Gibbon SPP [Hylobatidae] and four Primate SPP, [Cercopithecidae], while the same were being carried illegally by accused Habibur Rahman and his associate Zanak Khan, in a Maruti Suzuki Eco vehicle.

Mr. Bora, learned counsel for the accused submits that this is the second application preferred by the accused on the following grounds:-

- (1) *The length of detention, as the accused are languishing in the jail since for last 331 days.*
- (2) *The species, which were allegedly recovered from the possession of the accused persons, does not fall in any of the schedule of the Wild Life*

(Protection) Act, 1972 and as such they are not wild life.

(3) That vide order dated 05.12.2022, in BA No.3175/2022, this Court has directed the learned Court below to conclude the trial, preferably within a period of two months, but even after the lapse of more than three months, the learned Court below has failed to complete the trial.

Mr. Borah, learned counsel for the accused further submits that the earlier bail application was rejected by this court vide order dated 05.12.2022 in B/A No. 3175/2022. Mr. Borah also produced one order of this Court, dated 20.08.2020, passed in BA No.1611/2020, wherein bail was granted to the accused of that case taking into account the fact that the seized animals did not come within the purview of the Wild Life (Protection) Act, 1972 and as such, the detention of the accused would not be permissible under the said Act. Further, Mr. Borah submits that the accused are ready to participate in the trial, and therefore, it is contended to allow the petition.

On the other hand, Mr. D. Gogoi, learned Special P.P. for the Forest Department has vehemently opposed the petition on the ground that though the seized species were not scheduled species, yet in view of the definition of Section 2 of the Wild Life (Protection) Act and referring to some of the decisions of this Court in Criminal Petition No.344/2021, dated 08.10.2021, and the order dated 13.06.2022, passed in BA No.1008/2022, Mr. Gogoi submits that the seized species are covered under the Wild Life (Protection) Act. Mr. Gogoi, referring to the Wildlife Protection (Assam Amendment) Act, 2009, submits that as per the Amendment of Section 51(B)(2)(b), the accused have to satisfy the Court that there are reasonable ground for believing that the accused is not likely to commit any such offence in future, if he is released on bail and as the present accused failed to satisfy the aforesaid requirement of law, and that the offences are serious in nature and the punishment prescribed for the offence is up to 10

years with fine and that the accused hails from Manipur and if enlarged on bail it would be difficult to procure their attendance and that trial is at the last stage and granting bail at this stage will cause delay in disposal of the case and therefore, it is contended to dismiss the petition.

Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on the record and also perused the decision of this Court in BA No.1611/2020, referred by Mr. M.K. Borah, learned counsel for the accused and also gone through the decision of this Court in Criminal Petition No.344/2021 and the order dated 13.06.2022, passed in BA No.1008/2022 and also gone through the order of this court dated 05.12.2022, in BA No.3175/2022, and the status report, dated 03.03.2023, received from the learned court below.

It appears from the status report that final complaint was lodged against both the accused under section 51(1) of Wild Life (Protection) Act citing as many as seven witnesses. Further, it appears that both the accused were charged by the learned court below under Section 51(1) of the Wild Life (Protection) Act, 1971 vide order dated 30.09.2022. The said order of framing charge is not challenged by the accused in any forum. That being so, it would not be appropriate for this court to deal with the issue, so raised by Mr. Borah regarding applicability of the Wild Life (Protection) Act, 1972. Besides, a conjoint reading of the definition of 'wild life', section-2(37) and 'wild animal', section 2(36) with that of the statement, object and reason behind enacting the Wild Life (Protection) Act, 1972, this court left unimpressed by the submission of Mr. Borah, the learned counsel for the accused and the decision of the co-ordinate bench of this court cannot read as a precedent. It is to be noted here that the said Act was enacted not only to protect the 'wild animals' and birds, but also for all matters

connected therewith or ancillary and incidental there to.

It also appears that as many as seven witnesses were cited in the final complaint and the learned court below has already examined three witnesses and four witnesses are left to be cross-examined, though their examination in-chief have already been recorded. This being the factual position, it can reasonably be expected that trial will be completed very soon.

Further, from the evidence of the witnesses, already examined by the learned court below and available on the scanned copy of the record it cannot be said that charge, so framed against the accused persons is irrelevant. Further, from the submissions of the learned counsel for the accused and the materials placed on record, this Court is unable to derive its satisfaction that the accused will not commit similar offence in future, if enlarged on bail. Besides, it appears that the trial is at the last stage and both the accused hails from Manipur and enlarging them on bail at this stage may cause further delay in disposal of the case.

Under the above facts and circumstances, this Court is of the opinion that this is not a fit case to grant the privilege of bail, under Section 439 of the Cr.P.C. to the accused persons. Accordingly, this bail application stands dismissed.

However, the learned Court below is directed to expedite the trial and conclude the same within a period of one month from today, 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.

In terms of above, the bail application stands disposed of.

JUDGE

Comparing Assistant