

GAHC010019772023



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

Case No. : Bail Appln./354/2023

DHARMENDRA PATGIRI
S/O GAJENDRA PATGIRI R/O VILL. UTTAR GANAKGARI P.S. SORBHOG
DIST. BARPETA ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE SPECIAL PP. ASSAM WILDLIFE PROTECTION ACT, 1972

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

03.03.2023

Heard Mr. B. K. Mahajan, learned counsel for the accused and Mr. D. Gogoi, learned Special Public Prosecutor for Forest Department, Assam.

2. This application under Section 439 CrPC is preferred by accused Dharmendra Patgiri, who has been languishing in jail hazot, in connection with C.R. No. 40/2023, arising out of OR No. HQ/01 of 2023, registered under Sections 9/39/49B/51 of the Wildlife (Protection) Act, 1972.

3. The said case has been registered on the basis of one complaint lodged by one Papori Kachari, Forester-I of Manash Tiger Reserve, Barpeta Road on 21.01.2023, to the effect that acting on a tip off, they have conducted search in the house of the accused Dharmendra Patgiri and found him packing some meat in polythene packets and the physical feature of the meat seems to be of deer meat and on being asked, he stated that the meat was of wild deer. Then, she has seized 43 (forty three) numbers of suspected deer meat packets from his possession, preparing seizure list and on the basis of his statement, she has apprehended another accused namely Jyotish Das.
4. Mr. B. K. Mahajan, learned counsel for the accused submits that the accused Dharmendra Patgiri was arrested on 21.01.2023, and since then, he has been languishing in jail hazot for last 44 (forty four) days. Further, Mr. Mahajan submits that the maximum punishment prescribed for the offence is upto 10 (ten) years and as such, the mandatory period of detention is 60 (sixty) days. Mr. Mahajan further submits that the accused was arrested without causing service of notice under Section 41(A) of the CrPC and in view of the non-compliance of the guidelines issued in the case of **Arnesh Kumar vs. State of Bihar**, reported in (2014) 8 SCC 273, the accused is entitled to bail, in view of law laid down in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and Another**, reported in 2022 LiveLaw (SC) 577. Mr. Mahajan further submits that this Court has granted pre-arrest bail to one of the accused, namely, Chandan Boro considering the materials available on the record and therefore contended to allow this petition.
5. On the other hand, Mr. D. Gogoi, learned Special Public Prosecutor, Forest Department, Assam has vehemently opposed the petition on the ground that the meat, which was seized from the possession of the accused is an endangered species meant Schedule-III of the Wildlife (Protection) Act, 1972 and that Section 51 of the Assam Wild Life (Protection) Act is amended and a new Section 51 (B) is incorporated and as per sub-section 2(b) of Section 51(B), the Court should not enlarge the accused on bail unless satisfied that there are reasonable ground for believing that the accused is not likely to commit any offence while on bail and that the direction of Hon'ble Supreme Court in the case of **Satender Kumar Antil** (supra) and **Arnesh Kumar** (supra) are not applicable in the present case and that the investigation is yet to be completed and some of the co-accused are absconding and therefore, it is contended to dismiss the petition.
6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also gone through the case laws, referred by Mr. Mahajan, the learned counsel for the accused and also gone through the statement of the accused,

recorded by the Deputy Director of Manash Tiger Reserve, Barpeta Road.

7. It appears that the meat, which was seized from the possession of the accused is a meat of Sambar (cervus unicolour) as mentioned in serial no. 16 of the Schedule-III of the Wildlife (Protection) Act, 1972. Further, it appears from the statement of the accused and the co-accused, recorded by the Deputy Director of Manash Tiger Reserve, Barpeta Road that the accused admitted having his complicity with the offence alleged in the complaint and further admitted dealing with the deer meat on earlier occasion also. This statement has some relevance in the trial and as such, as required by Sections 51(b)(2)(b), this Court is unable to derive the satisfaction that the accused is not likely to commit any offence while on bail.

8. Having regards to the above, and also having regards to the materials available against the accused and also the nature of accusation on the punishment prescribed for the same, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused. Investigation is still going and extending the privilege of bail to the accused will misdirect the investigation.

Accordingly, the petition stands dismissed.

JUDGE

Comparing Assistant