

GAHC010026842023



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

Case No. : Bail Appln./471/2023

NAVAJIT SAIKIA
S/O- MAKHAN CH. SAIKIA, R/O- TOWN BANTOU, WN-14, P.S. NORTH
LAKHIMPUR, DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P., ASSAM

Advocate for the Petitioner : MR. B GOGOI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 23.02.2023

Heard Mr. B. Gogoi, learned counsel for the petitioner and Mr. R.J. Baruah, learned counsel for the State.

2. The petitioner, Navajit Saikia, who was arrested on 27.01.2023 in connection with NL PS Case No. 262/2022 under Sections 120B/121/ 121A

IPC read with Sections 10/13/15(i)(a)/17/18/18B of Unlawful Activities (Prevention) Act, read with Section 66F of the Information Technology Act, 2000, has prayed for regular bail under Section 439 CrPC.

3. As per the FIR, the petitioner is accused of uploading a facebook post to the effect that he wants to join the proscribed organisation and that their life is so beautiful and thus, it is being projected that the post in support of United Liberation Front of Assam (ULFA), is encouraging others to join the said banned organisation.

4. The learned Addl. PP has produced the case diary and has opposed the prayer for bail. It is also submitted that the investigation is being carried out to unearth further conspiracy to wage war upon the Country.

5. The case diary reveals that the petitioner had uploaded a post from his facebook account in the facebook page of Axom Live 24, which reads as follows – *"Mur jabo mon jai tat. Eman hundor life."* A freehand translation thereof, in English would be *"My heart desires to go there. Such a beautiful life."* The said comment was made by the petitioner against the post showing alleged ULFA cadre dancing.

6. Apart from the said post, the learned Add. PP has neither been able to show any post uploaded by the petitioner to invite people to join the proscribed organisation, nor there is any material in the case diary from which it can be presumed that the petitioner had made any arrangement to join the proscribed organisation or took any steps in furtherance of his post. The mobile phone of the petitioner was seized on 27.01.2023, but the case diary does not show the presence of any objectionable material stored in the said mobile to

show that the petitioner is otherwise a supporter of ULFA in any manner whatsoever. Thus, save and except for a singular facebook post, there is no material against the petitioner. The learned Addl. PP had strenuously submitted against releasing the petitioner on bail, nonetheless, he could not demonstrate and convince the Court as to how the text of the said post can be construed to invite readers of the facebook post to join in the cadre of the proscribed organisation.

7. Thus, the Court is constrained to hold that there is no *prima facie* materials in the case diary to show that the petitioner has done any act, or made any preparation to wage war on the Country, or that the petitioner is a member of the banned unlawful association i.e. ULFA, or that he has solicited funds for the said unlawful association, or has assisted the said organisation and/or participated in any programme thereof in any manner whatsoever. There is also no material to show that the petitioner has abated, advised or incited commission of any unlawful activity. Moreover, there is no material in the case diary to show that the petitioner has engaged himself in any terrorist act within the meaning of Section 15 of Unlawful Activities (Prevention) Act. Moreover, the I.O. has not been able to show that the petitioner has conspired with anyone to commit any terrorist activity whatsoever.

8. Merely because the petitioner has seen the ULFA cadres dancing and has perceived that their lives are beautiful and has posted the comment, could not be shown to be included as an offence within the meaning of the provisions of Sections 120B/121/ 121A IPC read with Sections 10/13/15(i) (a)/17/18/18B of Unlawful Activities (Prevention) Act, read with Section 66F of the Information Technology Act, 2000, under which the petitioner was arrested.

9. Therefore, the Court is of the considered opinion that the petitioner having spent 27 days in custody, his further custodial interrogation is no longer required. Therefore, the Court is inclined to release the petitioner on bail on his furnishing a bail bond of Rs.1,00,000/- (Rupees one lakh only) with one solvent surety of like amount to the satisfaction of the Chief Judicial Magistrate, North Lakhimpur, Lakhimpur.

10. Bail is granted on the following conditions:-

- a. The petitioner shall make himself available to the police or any other investigating agency or Court in the present case as and when required.
- b. The petitioner 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 Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.
- c. The petitioner shall not obstruct the smooth progress of the investigation/trial.
- d. The petitioner shall not misuse his liberty in any manner.
- e. The petitioner shall appear before the I/O within 15 (fifteen) days from the date of his release and he shall continue to appear once in every month till his appearance is dispensed with or charge-sheet is filed, whichever is earlier.
- f. In the event the petitioner is found to have made any post in favour of any proscribed organisation, it would be open to the I.O. to move the jurisdictional Court for cancellation of bail.

11. It is clarified that the observations made herein before is only for the purpose of deciding this bail application and is not intended to be construed to be the opinion of the Court on merit of the case. Therefore, none of the observations made in this order shall in any manner whatsoever prejudice the prosecution during the trial of the case.

12. Before parting with the records, the Court is inclined to mention that as per the statement made by the petitioner before the I.O., he had voluntarily appeared before the police because in the previous day, the police had arrived at his house and his family members were informed to produce the petitioner before them. However, there is no entry in the case diary that the police personnel had visited the house of the petitioner on the previous date of arresting the petitioner. Therefore, it is expected that the Superintendent of Police, Lakhimpur and/or the Circle Inspector shall also examine the said aspect.

13. Return the case diary.

14. This application stands disposed of.

JUDGE

Comparing Assistant