

GAHC010034692023



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

Case No. : I.A.(Civil)/610/2023

MD. ABDUL MALIK @ ABDUL MALIK KHAN
S/O- LATE ABDUL SATTAR,
PERMANENT R/O- PATHARKANDI ROAD, KARIMGANJ TOWN, P.O-
KARIMGANJ, P.S- KARIMGANJ, DIST-KAMRUP (M), ASSAM

VERSUS

THE UNION OF INDIA AND ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, HOME DEPARTMENT,
NEW DELHI

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE SUPERINTENDENT OF POLICE
SIVASAGAR
P.O
P.S AND DIST- SIVASAGAR
ASSAM

4:THE SUPERINTENDENT OF POLICE (B)
JORHAT
P.O
P.S AND DIST- JORHAT
ASSAM

5:THE DEPUTY COMMISSIONER
JORHAT
P.O

P.S AND DIST- JORHAT
ASSAM

6:THE NATIONAL REGISTER OF CITIZENS
REP. BY THE COORDINATOR
ACHYUT PLAZA
BHARALUPUR
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M)
ASSAM

7:THE ELECTION COMMISSIONER OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
ASHOKA ROAD
NEW DELHI-11000

Advocate for the Petitioner : MR. S NATH

Advocate for the Respondent : DY.S.G.I.

Linked Case : WP(C)/8058/2022

MD. ABDUL MALIK @ ABDUL MALIK KHAN
S/O- LATE ABDUL SATTAR

PERMANENT R/O- PATHARKANDI ROAD
KARIMGANJ TOWN
P.O- KARIMGANJ
P.S AND DIST- KARIMGANJ
ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS
NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT

DISPUR
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3:THE SUPERINTENDENT OF POLICE
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GUWAHATI-05
DIST- KAMRUP (M)
ASSAM
7:THE ELECTION COMMISSIONER OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
ASHOKA ROAD
NEW DELHI-110001

Advocate for : MR. S NATH

Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 6 ORS

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

09.03.2023

(AM Bujor Barua, J)

Heard Mr. S Nath, learned counsel for the applicant/petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Mr. G Sharma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Sivasagar, Superintendent of Police (B) Jorhat and Superintendent of Police (B) Choraideo, and Ms. M Dutta, learned Government Advocate for the Deputy Commissioner, Jorhat.

2. Being aggrieved by the opinion dated 30.09.2022 in Case No. New No.FT/CRD/755/10 of Foreigners Tribunal Jorhat, the petitioner had instituted WP(C)No.8058/2022 wherein by the order dated 16.12.2022 the Court had provided that if the petitioner has not yet been detained on the strength of the opinion dated 30.09.2022, he shall not be taken into custody and deported from India. The order also contains certain conditions as provided therein.

3. This interlocutory application has been filed on the premises that although by the order dated 16.12.2022 in WP(C)No.8058/2022 it had been provided that the petitioner shall not be taken into custody and deported from India, but on facts, the petitioner had already been taken into custody on 30.09.2022. Being aggrieved, the petitioner by way of this interlocutory application prays for a direction to release him from custody. As an interim order had already been passed in favour of the petitioner requiring him to be not taken into custody, but on the contrary, the petitioner had already been taken into custody on 30.09.2022, we are of the view that the petitioner is also entitled to be released

from custody.

4. Accordingly, the petitioner shall be released on bail upon furnishing a bail bond of Rs.5,000/- (Rupees Five Thousand) only with one local surety of the like amount to the satisfaction of the Superintendent of Police (Border) Choraideo, whereafter the petitioner shall be allowed to remain on bail. The concerned Superintendent of Police (Border) Choraideo shall also take steps for capturing the fingerprints of both hands and biometrics of the iris of the petitioner.

5. It is made clear that the petitioner shall not leave the jurisdiction of Choraideo district without giving details of the place of destination and his/her place of stay to the Superintendent of Police (Border) Choraideo including relevant contact/mobile number. It is further made clear that failure on the part of the petitioner to provide the relevant mobile/contact number will warrant recalling of this bail order.

6. Interlocutory application stands allowed as indicated hereinabove.

JUDGE

JUDGE

Comparing Assistant