

GAHC010039392021



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

Case No. : CrI.A./78/2021

CHINMOY LAHKAR
S/O- SRI BIREN KUMAR LAHKAR, R/O- H/NO. 4, CHRISTIANBASTI,
MAHATMA GANDHI PATH, UNDER DISPUR POLICE STATION, DIST.-
KAMRUP(M), ASSAM.

VERSUS

NATIONAL INVESTIGATION AGENCY
REP. BY ITS STANDING COUNSEL (NIA).

Advocate for the Petitioner : MR P KATAKI

Advocate for the Respondent : SC, NIA

:: PRESENT ::

HON'BLE MR. JUSTICE SUMAN SHYAM
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant :	Mr. P. Kataki, Advocate.
For the Respondent :	Mr. D.K. Das, Senior Advocate. Ms. G.D. Choudhury, Advocate (NIA).

Date of Hearing : 03.01.2023.

Date of Judgment : 09.01.2023.

JUDGMENT AND ORDER (CAV)

(Parthivjyoti Saikia, J)

Heard Mr. P. Kataki, the learned counsel appearing for the appellant. Also heard Mr. D.K. Das, the learned senior counsel assisted by Ms. G.D. Choudhury, the learned counsel representing the National Investigation Agency.

2. This is an appeal under Section 21(1) of the National Investigation Agency Act, 2008 challenging the order dated 27.01.2021 passed by the learned Special Judge, NIA, Assam, Guwahati in Misc. Case (NIA) No. 27/2020 arising out of Special Case No. 02/2019. By the impugned order, the bail application of the appellant was rejected.

3. On 15.05.2019, near Central Mall at Zoo Road, Guwahati, a grenade was thrown. The FIR was lodged by Mr. M.C. Deka, S.I. of Police, Geetanagar Police Station, Guwahati. Initially, Geetanagar P.S. Case No. 210/2019 was registered. Later on, NIA took over the matter and the case no. RC-04/2019/NIA/Guwahati was registered under Sections 325/326/307 and 121 of the Indian Penal Code read with Section 10/13/16/20 of the UA(P) Act read with Section 3/5 of the Explosive Substances Act, 1908 was registered. On conclusion of investigation, charge sheet was filed against 8(eight) persons including the present appellant Chinmoy Lahkar (A-4).

4. During investigation, it was discovered that A-4 is a member of ULFA-

1. It was also found out that on 15.05.2019, the appellant A-4 had a meeting at a place at Zoo Road Tiniali, Guwahati with Pappu Koch Bokoliyal @ BijoyAsom @ Anvi @ Rajini (A-1), Pranmay Rajguru (A-3) and Jahnabee Saikia (A-2). On that day, i.e. on 15.05.2019 at about 7.40 PM (1940 Hrs.), the present appellant (A-4) and A-1 came near Central Mall, Guwahati in a motorcycle. The said motorcycle was driven by the present appellant and A-1 was riding the pillion. When the duo reached near Central Mall, Guwahati, A-1 lobbed a grenade towards a team of security forces.

5. The appellant gave statements before police stating that A-3 and A-2 assured him to provide one job in a restaura and on that ground, the appellant had multiple interactions with them. He further stated that on 15.05.2019 at about 5.30 P.M., he went to the house of A-2 and at about 6.15 P.M., he along with A-1 came to Zoo Road Tiniali in a motor cycle, which was driven by the present appellant. The appellant saw A-2 standing in front of a shop near Guwahati Central Mall. Therefore, the appellant stopped the motor cycle. The appellant further stated that he dropped A-1 near Guwahati Central Mall and after that, he went home.

6. We have gone through the impugned order. The trial court rejected the bail application of the appellant on the ground that the materials available against him show a *prima facie* case of commission of terrorist act, conspiracy or abetment to commission of terrorist act. The observations made by the learned trial Court in paragraph 26 of the impugned order are re-produced here-in-below:-

“26. Upon analyzing the aforesaid materials in the case diary and

the charge-sheet, I am of the considered view that it appears **prima-facie** that the accused Sri Chinmoy Lahkar (A-4) associated himself with the activities of A-1, A-2 and A-3 knowing them to be active members of the banned organization ULFA. His meetings with these persons in the house of Jahnabee Saikia has been corroborated by witnesses. It also appears **prima-facie** that he provided logistics and transportation support to A-1 by taking him around Guwahati City and by carrying him pillion of his motorcycle at the time of the incident when A-1 lobbed the grenade near Central Mall, Guwahati; that, on 15.05.2019 the meeting of A-4 with A-1, A-2 and A-3 at Zoo Tinali prior to the incident and subsequently, A-4 along with A-1 doing a dry run of the targeted area has been **prima-facie** revealed by the materials on record such as electronic communications and tower locations analysis. A-4 has claimed that he was victim of circumstances and did not realize as to how A-1 riding pillion on his bike threw the grenade. Now, the question is- if this indeed was a case, then A-4 immediately after the incident ought to have gone to the nearest police station to report the matter. Thus, on the basis of the materials revealed in the investigation, I am of the considered view that **prima-facie** these materials implicate the accused A-4 with regard to commission of terrorist act, conspiracy or abetment to commission of terrorist act and also with regard to support given to a terrorist organisation, punishable u/s-16, 18 and 39 respectively, of the UAP Act."

7. We have given our anxious considerations to the submissions of the learned counsels as well as the materials before us.

8. The appellant (A-4) has admitted before Police that on 15.05.02019 he brought A-1 to a place near Guwahati Central Mall and thereafter A-1 lobbed grenade. According to the appellant A-4, he did not have the knowledge that A-1 was carrying a grenade with him at that time. But even after the grenade blast, the appellant was roaming freely and he never informed the Police about the aforesaid fact.

9. Considering the materials available on record we do not find any

justifiable ground to disagree with the findings and conclusions recorded by the learned court below. Rather we find that the materials available on record shows a *prima facie* case against the appellant. We, however, make it clear that our view, recorded hereinabove, is for the limited purpose of disposal of the appeal and it shall not have any bearing upon the merit of the case during trial.

10. For the aforesaid reasons, we are not inclined to allow the appellant (A-4) to go on bail at this stage. The present appeal is dismissed accordingly.

The Case Diary be returned.

JUDGE

JUDGE

Comparing Assistant