

GAHC010040762022



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

Case No. : Crl.A./79/2022

LAXMI DEVI
W/O N. PRIYO KUMAR SINGHA @ KESHO METEI
RESIDENT OF UCCHIWA, KONCHAK MAMANG LEIKAI,
PS MAYANG IMPHAL, DIST IMPHAL WEST, MANIPUR.

VERSUS

THE NATIONAL INVESTIGATION AGENCY , NIA
REPRESENTED BY SC, NIA

Advocate for the Petitioner : MR. K SINGHA
Advocate for the Respondent : SC, NIA

:: BEFORE ::

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

O R D E R

03.01.2023

(Suman Shyam, J)

Heard Mr. Z. Kamar, the learned senior counsel assisted by Mr. K. Singha, learned counsel appearing for the appellant. Also heard Mr. RK Dev Choudhury, the learned Deputy Solicitor General of India (DSGI)

assisted by Mr. Sathyanarayana, learned Senior Public Prosecutor, NIA.

2. The instant appeal is presented against the order dated 14.12.2021 passed by the Special Judge, NIA, Assam, Guwahati in connection with Misc. Case (NIA) No.21/2021 arising out of Spl. NIA Case No.02/2012 whereby, the bail petition filed by the appellant was rejected by the learned court below.

3. The appellant N. Laxmi Devi is one of the accused persons in Spl. NIA Case No.02/2012 arising out of NIA Case No.RC-03/2011/NIA-GUW. It appears that after completion of investigation, *charge sheet* was submitted by the NIA against 6(six) accused persons including the appellant herein and her husband N. Priyo Kumar Singha @ Kesho Metei (A-4). Thereafter, summons were issued to the appellant by the learned trial court but when she had failed to appear before the learned court below despite service of summons, a warrant of arrest was issued against the appellant, based on which, she was arrested on 07.04.2017. Since then, the appellant is in custody.

4. The learned trial court has framed charge against the appellant under Sections 120B/420/468/471 of the IPC read with Section 21 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter for short, referred to as "the UAPA"). The appellant is facing trial from detention. The learned trial court had rejected the bail application filed by the appellant, for the second time, by the impugned order dated 14.12.2021. Hence, this appeal.

5. By referring to the materials available on record, Mr. Kamar, the learned senior counsel for the appellant submits that the only allegation against his client is to the effect that the money allegedly collected by her husband (A-4) by means of terrorist activities was partially deposited in the bank account of the appellant, which fact was evidenced by the lavish lifestyle led by the family. Mr. Kamar submits that save and except the above assumption, there is no evidence whatsoever, implicating the appellant in any terrorist or antisocial activity. He further submits that after service of summons, the appellant could not appear before the learned court below for reasons beyond her control, as a result of which, she was arrested. Mr. Kamar submits that had the appellant appeared before the learned trial court in response to the summons issued by the court, then in all probability, she would not have been taken into custody. In support of his argument, Mr. Kamar has referred to the order granting bail to similarly situated co-accused persons in connection with this case, who had appeared before the learned trial court upon receipt of summonses and were granted bail.

6. Contending that the learned trial court has misread and misinterpreted the law laid-down in the case of *NIA v. Zahoor Ahmed Shah Watali*, reported in (2019) 5 SCC 1 as well as in the decision of this Court in the case of *Rojen Boro & Anr. v. National Investigation Agency & Anr.*, reported in 2016 (4) GLT (FB) 803 the learned counsel for the appellant submits that law does not prohibit the court from considering the bail application merely because charge has been framed against

the accused person. Mr. Kamar, further submits that having regard to the period of detention of the appellant and the peculiar facts and circumstances of the case, this is a fit case where the appellant be allowed to go on bail during pendency of trial.

7. The learned senior counsel has further submitted that out of the 163 witnesses named in the *charge sheet*, only 83 of them have been examined till now and the remaining witnesses, including those named in the supplementary *charge sheet*, are yet to be examined and therefore, there is every likelihood that the trial will take considerable amount of time. Mr. Kamar further submits that during the course of investigation, his client was never arrested and in the event of granting bail, the appellant will face trial without any default.

8. Responding to the above, Mr. Dev Choudhury, learned DSGI submits that it is correct that save and except the fact that the part of the money collected by the husband of the appellant could be traced backed to her bank account, there is no evidence implicating the appellant in any act of terrorism. However, by referring to Section 21 of the UAPA, 1967, Mr. Dev Choudhury has argued that if it is established that the appellant had the knowledge about the fact that the money deposited in her bank account was drawn from acts of terrorism, in that event, she would be liable under Section 21 of the UAPA. Therefore, the present is not a fit case for allowing the appellant to go on bail.

9. We have considered the submissions advanced by the learned

counsels of both sides and have also carefully gone through the materials available on record.

10. As noted above, the allegation brought against the husband of the appellant, namely N. Priyo Kumar Singha @ Kesho Metei (A-4) is to the effect that he is an active member of the banned organisation called KCP of Manipur. In his capacity, as such, the A-4 had resorted to extortion and has amassed huge amount of wealth. The learned trial court had relied upon the statement of witness nos.32, 33, 35, 46 and 52 to arrive at a *prima facie* conclusion that the husband of the appellant was a member of a banned extremist organisation. The learned trial court has also noticed that there were some bank transactions including transfer of large amount of money in the account of the deceased mother of the appellant. According to learned court below, such money was diverted to the account of mother of the appellant by the extremist organisation and the appellant is also a beneficiary of the same.

11. It is no doubt correct that if it is established during trial that the appellant is a recipient of money generated through activities of terrorism and she had allowed such amount to be deposited in her bank account knowing the same to be money collected through extremist organisation, then she would be liable to be convicted and punished under Section 21 of the UAPA. However, whether the amount diverted to the appellant's account, if any, forms parts of the money collected by terrorist organisation and if so, whether she had knowledge about the same, are matters, which will have to be established during trial.

12. It is also to be noted herein that the entire prosecution case, as projected through the materials available on record, hinges upon the fact that her husband is an active member of a banned terrorist organisation and that he had diverted money collected through extortion, to his wife's account. It is, therefore, axiomatic that unless the charge brought against the husband of the appellant i.e. the A-4 is established, the prosecution case may not stand independently against the appellant. All these aspect of the matter would have to be examined during trial based on the evidence brought on record. However, we find that this aspect of the matter has not been considered by the learned trial court before arriving at a satisfaction as regards *prima facie* case, showing involvement of the accused/appellant. Rather, it appears that by the order dated 14.12.2021, the learned court below has rejected the second bail application filed by the appellant purely on a technical ground, i.e. non-existence of any new ground to take a different view in the matter.

13. Be that as it may, save and except the allegation of deposit of money in the account of the appellant and the lavish lifestyle led by them, as noticed by the learned trial court, there is no other material to *prima facie* implicate the appellant herein with the commission of any offence punishable under the law. Considering the fact that she has already been in custody for more than five years and also having regard to the fact that similarly situated co-accused persons have already been granted bail by the learned trial court since they had appeared before

the learned court below in response to the summons issued by the court and also taking note of the explanation furnished by Mr. Kamar indicating the reason for the failure of his client to appear before the learned trial court in response to the summons, we are of the view that the present is a fit case to interfere with the impugned order dated 14.12.2021 and allow the appellant to go on bail.

14. As such, it is hereby ordered that the appellant, namely N. Laxmi Devi be released on bail on furnishing a bail bond of Rs. 50,000/- with two sureties of like amount to the satisfaction of the learned trial court. It will be open for the learned trial court to impose any other additional condition for release of the appellant on bail, if so desired.

15. Before parting with the record, we make it clear that the observation made hereinabove are *prima facie* in nature and have been made purely for the limited purpose of disposing of this appeal.

The appeal stands disposed off.

JUDGE

JUDGE

Comparing Assistant