

GAHC010045292023



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

Case No. : Bail Appln./754/2023

KAJIBUR HUSSAIN @ KHADDAR AND 3 ORS
S/O LATE SONGSER ALI
R/O CHAPRA
P.S. BARPETA
DIST. BARPETA, ASSAM

2: ABU BAKKAR SIDDIQUE
S/O LATE ATAB ALI
R/O JOSHIHATIPARA
P.S. BARPETA
DIST. BARPETA
ASSAM

3: ABUL KALAM AZAD
S/O AMIR ALI
R/O DHAKALIAPARA
P.S. HOWLY
DIST. BARPETA
ASSAM

4: AKBAR ALI
S/O AMIR ALI
R/O DHAKALIAPARA
P.S. HOWLY
DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

22.03.2023

Heard Mr. H.R.A. Choudhury, learned Sr. counsel appearing for the accused petitioners as well as Mr. R.J. Baruah, learned Addl. P.P., Assam for the State respondent.

2. By this petition under Section 439 Cr.P.C., the accused-petitioners, namely **1) Kajibur Hussain @Khaddar 2) Abu Bakkar Siddique 3) Abdul Kalam Azad and 4) Akbar Ali** have prayed for grant of bail in connection with **Sessions Case No. 10/2023** arising out of **Barpeta P.S. Case No.763/2022** under Sections **120B/121/121A** of the IPC read with Sections **17/18/18B/19/20** of the Unlawful Activities (Prevention) Act, 1967 pending in the Court of learned District and Sessions Judge, Barpeta.

3. The scanned copy of the case record along with the case diary, as called for, is placed before the Court.

4. Mr. HRA Choudhury, learned Sr. counsel appearing for the accused petitioners, submits that the accused petitioners are languishing in judicial detention from the month of July/August, 2022 despite being innocent. Mr. Choudhury further submits that they are not named in the FIR and falsely arrayed as accused in the case. According to Mr. Choudhury, learned Senior Counsel, the charge-sheet itself shows that the accused petitioners are not

involved in terrorist activity except they are members of Ansarullah Bangla Team (ABT) affiliated to Al-Qaeda involved in Jehadi activities in the district of Barpeta, Assam, which is a banned outfit. Mr. Choudhury also submits that the investigating officer without any evidence laid the charge-sheet against them. It is submitted that mere possession of leaflets of the said banned organization without any evidence of circulation by the accused petitioners cannot amount to an offence attracting any offence under the U.A.(P) Act. Therefore, Mr. Choudhury submits that the accused petitioners may be released on bail subject to any condition(s).

5. *Per contra*, Mr. R.J. Baruah, learned Addl. Public Prosecutor, submits that the case record reveals that although the charge-sheet is submitted in the case under various provisions of the U.A.(P) Act, the case is pending at the stage of furnishing copies to the accused persons before consideration of charges. It is further submitted that there is abundance of prima facie evidence on the case diary showing the accused petitioners' direct and active association with unlawful activities and as such, their bail application may not be considered favourably at the present stage and liberty may be given to raise their grievances before the learned trial Court at the time of consideration of charges.

6. I have given due consideration to the above submissions of both sides and perused the evidence peculiar to each accused petitioner available on the case diary.

7. The case of the prosecution, in brief, is that on 28.07.2022 one Ranjan Doley, Inspector of Police lodged an FIR alleging, *inter alia*, that based on intelligence inputs and local enquiries on certain information which came to light during investigation of Barpeta P.S. Case Nos. 268/2022 and 419/2022 regarding existence of a Jehadi(terror) outfit based in Bangladesh and operating

in Barpeta District, it was learnt that several modules of the proscribed Ansarullah Bangla Team (ABT) having affiliation to Al-Qaeda in the Indian Sub-continent (AQIS) are active in Barpeta District and that members/supporters of ABT were indoctrinating and motivating the youth of Barpeta to join Jehadi outfits and work in modules "Ansars" (sleeper cells) for creating base for Al-Qaeda and its manifestations in various forms of names and styles in India, all of which are declared terrorist organizations in India as per provisions of the UA(P) Act, 1967.

8. The FIR further reveals that on examination, it was found that these modules had hatched a criminal conspiracy with other members of ABT along with a group of men/youth of the district to facilitate further training of indoctrinated youth/men for waging Jihad and related terrorist activities in the district and that they are working towards advocating, abetting, inciting, assisting, harbouring, recruiting and collecting funds for organizing and committing unlawful and terrorist activities in the name of Jihad.

9. It is also alleged that some FIR named persons were identified to have joined the modules of ABT who were also the key persons along with others in organizing and participating in various dharmsabhas/jalsas in which foreign nationals and members of the proscribed ABT participated. It is further alleged that they participated in secret meetings organized in various masjids and madrassas in the district as well as circulated books and pamphlets propagating jihad. The search of their houses led to recovery of certain incriminating documents and electronic devices which were accordingly seized.

10. It is noticed that the accused petitioner No.1 has been in judicial custody since 29.07.2022, while the accused petitioner No.2 from 06.08.2022 and the accused petitioners No.3 and 4 from 28.08.2022.

11. On perusal of the case record, it appears that in the instant case, the investigation is completed with filing of the charge-sheet against 15(fifteen) accused persons including the accused petitioners under the various provisions of Sections 18/19/20 of the U.A.(P) Act and the case is pending for furnishing copy.

12. It is noticed that a co-ordinate bench has granted the liberty of bail to co-accused persons namely, Jubair Khan vide order, dated 09.01.2023 in B.A. No. 3552/2022 and Rafiqul Islam vide order, dated 04.01.2023 in B.A. No. 3624/2022.

13. On scrutiny of the case diary, it is, *inter-alia*, prima facie revealed that the accused persons are members of ABT, which is affiliated to the banned international militant organization namely, Al Qaeda.

14. There is abundance of prima facie evidence to show that they actively associated with other members of the aforesaid organization by indulging in promoting various terrorist acts in the state of Assam to achieve the long term goal of establishing an Islamic State in India replacing its constitutional character of secularism.

15. The case diary clearly reveals in detail various terrorist acts which attract the definition of 'Terrorist Act' under Section 15 of the U.A. (P) Act and involvement in facilitating such acts by others, even beyond they, who are members of the organization by associating new persons to promote such acts. Various documents, electronic and print, are seized in connection with the case.

16. This is a serious case of unlawful activities threatening the national integration and security of India.

17. The prescribed punishment for being member of terrorist gang or

organization is imprisonment for a term which may extend to imprisonment for life and fine under Section 20 of the said Act.

18. It seems that the instant application for bail is made primarily on evidence disclosed in substance in the charge-sheet only.

19. Therefore, this Court is of the opinion that if the liberty of bail is granted to the accused petitioners before consideration of charges by the learned trial court, there is every chance of the accused petitioners repeating active association in unlawful activities.

For the above stated reasons, the bail application stands rejected.

The bail application stands disposed off.

JUDGE

Comparing Assistant