

GAHC010060602023



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

Case No. : Bail Appln./1059/2023

ZANAB KHAN AND ANR
S/O SIRAJ AHAMAD
R/O VILL- SANGALYUMPHAM
CHERAPUR MAKHA,PO.AND P.S. LEIKAI, IN THE DISTRICT OF THOUBAL,
STATE- MANIPUR, PIN-795001

2: HABIBUR RAHMAN
S/O NUR JAMAN
R/O VILL- SANGALYUMPHAM
CHERAPUR MAKHA
P.O. AND P.S. LEIKAI

IN THE DISTRICT OF THOUBAL

STATE- MANIPUR
PIN-79500

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PP, ASSAM

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST (PCCF)
ASSAM
AARANYA BHAWAN

BATAHGULI

PANJABARI ROAD

GUWAHATI-781037

3:THE ASSISTANT CONSERVATOR OF FOREST

I/C RANGE FOREST OFFICER
CENTRAL RANGE
KARBI - ANGLONG
EAST DIVISION

MANJA
ASSAM
PIN-78246

Advocate for the Petitioner : M K BORAH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

23.03.2023

Heard Mr. M.K. Borah, learned counsel for the accused and also heard Mr. D. Gogoi, learned Special P.P. for the Forest Department/respondent.

2. This bail application, under section 439 Cr.P.C., is preferred by the accused namely, Md. Zanab Khan and Habibur Rahman, who have been languishing in jail hajot since 12.04.2022, in connection with Ref, Case No. CR/01 of 2022-2023, under sections 2/9/39/40(2A)/43/ 48/48A/49B/50/51 of the Wildlife (Protection) Act, 1972, for grant of bail.

3. The gist of allegation, against the present accused persons, is that on 12.04.2022, they have been found carrying one Gibbon SPP [Hylobatidae] and four Primate SPP, [Cercopithecidae], illegally, in a Maruti Suzuki Eco vehicle.

4. Mr. Borah, learned counsel for the accused submits that this is the third application preferred by the accused persons and the earlier two applications were rejected by this court after perusing the status report received from the learned trial court. Mr. Borah further submits that the ground for filing this third application is that both the accused belongs to the Mohmadan Community and that the Holy month of Ramadan is beginning from today and they are intending to celebrate Ramadan Month with their family members and to enable them to celebrate the said Ramadan month with their family they may be allowed to go on interim bail. Mr. Borah further submits that they are ready to abide by any condition imposed by this court while granting interim bail. Mr. Borah also submits that vide order dated 09.03.2023, this court has directed the learned court below to complete the trial within a period of one month, but, the same could not be completed, and therefore, it is contended to allow this petition.

5. Per contra, Mr. Gogoi, learned Special P.P. has vehemently opposed the petition on the ground that the accused persons hails from Manipur and once they have been released from jail on interim bail, it will be very very difficult for the learned court below to procure their attendance. Mr. Gogoi also submits that not a single averment has been made in the petition in respect of deriving any satisfaction that they are not likely to commit any such offence in future, in view of the provision of sections 51B[2][b] of the Wildlife [Protection] [Assam Amendment] Act, 2009 and no cogent ground has been assigned by the accused persons to release them on bail, and that the trial is at the last stage and therefore, it is contended to dismiss the petition.

6. Having heard the submissions of learned counsel for both the parties, I

have carefully gone through the petition and the documents placed on record and I find substance in the submission of Mr. Gogoi, learned Special P.P. for the Forest Department.

7. It appears that the earlier bail application was rejected by this court vide order dated 09.03.2022, after perusing the status report and also the scanned copy of the record of the learned court below. Further, vide said order, the learned court below was directed to complete the trial within a period of one month and the said period is yet to elapse. Indisputably also, both the accused person hails from Manipur and the trial is also at the last stage. If, at the fag end of trial, the privilege of bail is extended to them, then it will cause delay in disposal of the case.

8. Further it appears that the learned counsel for the accused also failed to satisfy this court from the document placed on record, that the accused will not commit any such offence while on bail, as required by section 51B[2][b] of the Wildlife [Protection] [Assam Amendment] Act, 2009. As pointed out by Mr. Gogoi, the learned Special P.P., not a single averment is also made in the petition in this regard. There is no doubt that Ramadan is a holy month for the Mohmadan community, to which the accused persons belong. But, the ground, so assigned by learned counsel for the accused for preferring this third application, has to be considered in the light of well settled principles for granting bail. And while the said ground is considered in the light of facts and circumstances discussed herein above, and also in the light of nature and gravity of the offence and the punishment prescribed for the same, it left this court unimpressed.

9. In view of above, this court is of the view that this is not a fit case and also it is not a proper stage to grant bail to the accused persons and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant