

GAHC010082912023



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

**Case No. : Bail Appln./1134/2023**

ABBAS ALI  
S/O- LATE SUKUMUDDIN  
R/O- PAKHIURA  
P.S. PANCHARATNA  
DIST.- GOALPARA  
ASSAM

VERSUS

THE STATE OF ASSAM  
TO BE REP. BY THE P.P.  
ASSAM

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Advocate for : MR H R A CHOUDHURY  
Advocate for : PP  
ASSAM appearing for THE STATE OF ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**Date : 08.05.2023**

Heard Mr. HRA Choudhury, learned senior counsel, assisted by Mr. I.U. Choudhury, learned counsel for the petitioner. Also heard Mr. K.K. Parashar, learned Addl. PP for the State.

2. This regular bail application under Section 439 Cr.P.C. is preferred by Abbas Ali, who was arrested on 27.07.2022 in connection with Jogighopa P.S. Case No. 56/2022 under Sections 121/121A/120B/124A IPC read with Section 17/18/18B/19/20 of the Unlawful Activities (Prevention) Act, 1967 [UA(P) Act for short)], which is being tried before the Special Judge, North Salmara, Abhayapuri as Special U.A.(P) Case No. 70(J)/2022, which is being tried under Section 121A IPC read with Section 18/20 of the UA(P) Act.

3. The learned senior counsel for the petitioner has submitted that as per the charge-sheet dated 17.10.2022, "Ansarullah Bangla Team" (ABT for short) is allegedly a *jihadi* organisation having base at Bangladesh, and has affiliation/close-link with *Al Qaeda* another terrorist organisation in the Indian sub-continent. However, the petitioner is a cultivator and is merely accused of procuring and providing mobile SIM to another co-accused, namely, Saiful Islam @ Harun Rashid @ Mohammad Suman, who is an Imam of Dhakalipara Masjid on good faith and without suspecting that he was involved in any *jihadi* or terrorist activity.

4. In support of his submissions, reliance has been placed on the case of (i) *Thwaha Fasal v. Union of India*, Crl. Appeal No. 1302/2021 decided by the Supreme Court of India on 28.10.2021, (ii) *Yedala Subba Rao & Anr. v. Union of India*, 2023 LiveLaw (SC) 317.

5. The case of *Yedala Subba Rao (supra)*, was cited to bring home the point that in the said case, the accused were charged with offence under UA(P) Act, and despite the nature of crime which was committed in the said case, as the appellant in the said case was not present at the time of occurrence, despite

the fact that he had given shelter to a co-accused, he was released on bail. The case of *Thwaha Fasal (supra)*, was cited on the point that Section 43D(5) of UA(P) Act is less stringent than Section 37 of the NDPS Act and that the scope of enquiry is to decide whether there *prima facie* materials are available against the accused of commission of offence alleged under Chapters IV and VI of the UA(P) Act.

6. The learned Addl. PP has perused the scanned copy of the case diary and has opposed the prayer for bail.

7. Scanned copy of case record reveals that charge-sheet was submitted by the I.O. on 17.10.2022 under Section 121A IPC read with Section 18/19/20 of the UA(P) Act. The learned trial Court, in its order dated 19.10.2022, had recorded that the six accused named in the order were charged under Section 121A IPC read with Section 18/20 of the UA(P) Act and accordingly, cognizance of offence was taken by order dated 19.01.2022. By the same order. As against four accused, no materials were found and they were released. Out of the six accused against whom cognizance was taken, two accused were released by the learned trial Court by order dated 20.10.2022.

8. From the perusal of the contents of the charge-sheet, it appears that Saiful Islam @ Harun Rashid @ Mohammad Suman is a Bangladeshi national, who had entered India illegally and was allowed to work as Arabic Teacher at Dhakalipara Masjid. However, the said person was actively involved in conspiracy with other illegal Bangladeshi nationals who had entered India illegally to create "*ansars*" i.e. sleeper cells by radicalizing the misguided youths of the region. The mobile phone SIM of the said Saiful Islam @ Harun Rashid @

Mohammad Suman was provided by the petitioner.

9. In this regard, the Court is of the considered opinion that the petitioner, by providing mobile phone SIM to illegal Bangladeshi national for carrying out anti-national and terrorist activities, amounts to providing them with logistics support, without which it is not possible for anti-nationals and terrorists to conduct any activities in India. It cannot be accepted that the petitioner was not aware that the said person was not an Indian national or that he was not aware of his activities because a bona fide Indian national would not need somebody else's identity to obtain a SIM card. Thus, the nature of act which is allegedly committed by the petitioner, in the considered opinion of the Court, would be covered by Section 10 of the Evidence Act, 1872 read with *Illustration (b)* appended to the said Act.

10. The offence for which the petitioner is charged, if proved, would entail imprisonment for a term between 5 (five) years and life imprisonment.

Therefore, it would be appropriate to refer to the case of *Satender Kumar Antil v. Central Bureau of Investigation*, AIR 2022 SC 3386, wherein the Supreme Court of India had observed that where the undertrial is charged with offence punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties of like amount. However, for the offences punishable with death or imprisonment for life, bail is required to be granted on merit, and on case to case basis.

11. Therefore, considering the provision of Section 10 of the Evidence Act, 1872 and *Illustration (b)* to the said provision, and upon considering that the

petitioner had provided a mobile phone SIM to one of the co-accused, allegedly an ABT member, and allegedly a Bangladeshi national, the Court is unable to record its satisfaction that no *prima facie* materials are available against the accused of commission of offence alleged under Chapters IV and VI of the UA(P) Act.

12. Therefore, the prayer for bail is refused at this stage. Accordingly, this application for bail is rejected.

**JUDGE**

**Comparing Assistant**