

GAHC010075852023



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

Case No. : Bail Appln./1195/2023

PAPU GOGOI @ PAPPU
S/O ANDESWAR GOGOI R/O PATSAKU BORBHUYAN GAON P.S MORANHAT
DIST. CHARIDEO ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. B K MAHAJAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

23.05.2023

Heard Mr. B.K. Mahajan, learned counsel for the accused petitioner as well as Mr. B. Sarma, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused/petitioner, namely **Papu Gogoi @Pappu** has prayed for grant of bail in connection **Sonari P.S.**

Case No. 87/2023 u/s 120B/121/121(A)/387 of the IPC read with Sections **10/13/17/18** of the Unlawful Activities (Prevention) Act, 1967 (for short 'U.A.(P) Act).

The case diary as called for is placed before the Court.

Mr. B.K. Mahajan, learned counsel for the accused petitioner, submits that the accused petitioner is a businessman by profession dealing in coal and he has never associated with any unlawful activity. According to Mr. Mahajan, the accused has been roped into an entirely false case despite no objectionable material was seized from his possession. Mr. Mahajan submits that going by the definition of 'Unlawful Activity' as defined in Section 2(o) of the U.A.(P) Act, prima facie on perusal of the F.I.R. and Forwarding Report, the same is not attracted in the facts and circumstances of the case. On the other hand, Mr. Mahajan submits that going by the definition 'Terrorist Act' as defined in Section 2(k) corresponding to Section 15 of the aforesaid Act, on perusal of the F.I.R. and Forwarding Report, the same is not attracted. Further, Mr. Mahajan submits that no offence under Sections 17/18 of the aforesaid Act can be made out and as such, the bar under Section 43-D(5) of the aforesaid Act would not be applicable in the instant case. Therefore, Mr. Mahajan submits that in the backdrop of facts and circumstances, the accused petitioner may be directed to be released on bail.

Opposing the bail application, Mr. B. Sarma, learned Addl. Public Prosecutor, submits that the name of the accused petitioner is mentioned in the F.I.R. Mr. Sarma submits that the case diary reveals that the accused petitioner gave Rs.5,50,000/- to the banned militant outfit on different occasions and also paid money to the NSCN(K) on regular basis. Therefore, Mr. Sarma submits that the liberty of bail may not be granted to the accused petitioner.

The F.I.R., dated 15.03.2023 lodged by S.I. Shoan Kumar Dutta, reveals the allegation that the present accused petitioner along with some other accused persons had been working for a long time as linkmen, OGWs for a banned terrorist organization of Assam by providing logistics, ration, clothes medicine etc. It is also alleged that the accused persons had been working as courier for the said banned terrorist organization and collecting extortion money for it.

It is noticed that the accused petitioner has been in judicial custody since 16.03.2023, that is, for 69 days and he has undergone interrogation in police custody for seven days vide order, dated 16.03.2023, passed by the learned S.D.J.M.(M), Charaideo at Sonari.

Perusal of the case diary shows that the accused petitioner provided an amount of Rupees Five Lakhs Fifty Thousand to a banned terrorist organization against their extortion note demanding Rupees Thirty Five Lakhs, which he paid through one person of the adjoining Nagaland state. The case diary also reveals that initially the petitioner was reluctant to pay the amount as per demand, but, on persistent demand over phone through his security guard engaged in the coal mine from the member of the militant organization, he paid the money. On earlier occasion also, the accused petitioner received extortion call from a different banned militant organization and paid a total amount of Rupees 7 lakhs. In view of the extortion note, the accused petitioner approached the leading persons of the organizations through middlemen or through telephone call to get rid of the situation with intent to protect the future interest of his coal business in the area and thus, he paid the aforesaid amounts by compulsion. The case diary reveals that the accused petitioner is not a member of any banned militant organization but, the members of the banned terrorist organizations systematically collected extortion amounts from him and other

businessmen.

In Para No. 13.1 of *Sudesh Kedia Vs. Union of India*, reported in (2021) 4 SCC 704, the Hon'ble Supreme Court held as extracted hereinbelow-

“13.1. A close scrutiny of the material placed before the Court would clearly show that the main accusation against the appellant is that he paid levy/extortion amount to the terrorist organisation. Payment of extortion money does not amount to terror funding. It is clear from the supplementary charge-sheet and the other material on record that other accused who are members of the terrorist organisation have been systematically collecting extortion amounts from businessmen in Amrapali and Magadh areas. The appellant is carrying on transport business in the area of operation of the organisation. It is alleged in the second supplementary charge-sheet that the appellant paid money to the members of the TPC for smooth running of his business. Prima facie, it cannot be said that the appellant conspired with the other members of the TPC and raised funds to promote the organisation.”

Therefore, in the above backdrop of facts stated and the evidence that emerge from the case diary, this Court is of the considered opinion that prima facie the accused petitioner having not voluntarily involved in any 'unlawful activity' as defined in Section 2(o) and being not a member of any 'unlawful association' as defined in Section 2(p) of the UA(P) Act by virtue of being victim of extortion by members of banned militant outfits, subject to final outcome in investigation, he may be given the liberty of bail subject to conditions. This Court is of the further opinion that if the liberty of bail is granted to the accused petitioner, the ongoing investigation into the case is unlikely to be adversely affected.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.50,000/- (Rupees Fifty Thousand)** only with two sureties of like amount to the satisfaction of the learned **Chief Judicial Magistrate, Charaideo at Sonari** subject to the following conditions-

- i) That the accused petitioner shall cooperate with the investigating officer as and when required;
- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts either to the investigating officer or to the Court;
- iii) That the accused petitioner shall refrain from committing any similar offence in future of which he is suspected of commission; and
- iv) That the accused petitioner shall not withhold any extortion bid from any quarter and shall report promptly to the police.

Breach of any of the above conditions shall render cancellation of the bail in accordance with law.

Return the case diary.

This disposes of the bail application.

JUDGE

Comparing Assistant