

GAHC010080762018



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

Case No. : Crl.A./129/2018

THE NATIONAL INVESTIGATION AGENCY
THROUGH THE SUPERINTENDENT OF POLICE, NIA, BRANCH OFFICE
GUWAHATI, ASSAM, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA

VERSUS

SHRI ALIENBA PANGJUNG JAMIR
S/O ALIENBA JAMIR, PERMANENT R/O ASANGMA VILL. MOKOKCHUNG,
DIST. NAGALAND, PRESENTLY RESIDING BELOW, G ROI SCHOOL,
KOHIMA, DIST. NAGALAND.

Advocate for the Petitioner : MR J A HASSAN

Advocate for the Respondent : S BORGOHAIN

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

16.10.2023

(M. Zothankhuma, J)

1. Heard Mr. D.K. Das, learned Senior Counsel appearing for the NIA assisted by Ms. P.K. Darjee, learned counsel. Also heard Mr. S.Borgohain, learned counsel

for the respondent.

2. In this appeal, the order dated 23.03.2018 passed by the learned Special Judge, NIA, Nagaland, Dimapur in connection with RC-01/2016/NIA-GUW granting bail to the respondent/accused has been put to challenge. Mr. Das submits that having prima facie found materials available against the accused/respondent, the learned court below had clearly erred in exercising jurisdiction and releasing the accused on bail merely on the ground that he was a Government servant. It has also been submitted by the appellant's counsel that since the accused is on bail, which was granted only 3 (three) days after his arrest, bail had not been given on proper consideration of the law and facts.

3. Mr. D.K. Das, learned Senior Counsel for the applicant submits that charge-sheet has been filed against the 3 (three) persons on 25.01.2017 under Section 120-B/384 IPC and Sections 17/20/38/40 of the Unlawful Activities (Prevention) Act of 1967 (hereinafter referred to as "the UA(P) Act, 1967". Thereafter another supplementary charge-sheet was filed on 31.05.2018 against 7 (seven) other accused persons, including the respondent, wherein the respondent has been numbered as respondent no.4 and charged under Section 39/40 of the UA(P) Act, 1967.

4. The learned Senior Counsel for the applicant further submits that trial is going on before the learned Trial Court in pursuant to the charge-sheet and supplementary charge-sheet filed by the NIA. He submits that the respondent, who was the Joint Director of the Land Resource Department, Government of

Nagaland has taken voluntary retirement. He also submits that the respondent has given his confessional statement under Section 164 Cr.P.C before the learned CJM, Dimapur on 09.05.2017. Further, bail had been granted in violation of Section 43-D(5) of the UA(P) Act, 1967. He accordingly prays that the bail granted to the applicant should be set aside.

5. Mr. S. Borgohain, learned counsel for the respondent, on the other hand submits that at the time of filing of the bail application and grant of the bail application, vide the impugned order dated 23.03.2018, the applicant had been charged only under Section 10 & 13 of the UA(P) Act, 1967, besides being charged under other Sections pertaining to other Acts. As Section 10 & 13 of the UA(P) Act, 1967 is not included within Chapter-IV & VI of the UA(P) Act, 1967, Section 43-D(5) of the UA(P) Act, 1967 was not applicable to the applicant's case, for the purpose of granting bail. As such, there was no infirmity with the decision of the learned Trial Court in granting bail to the applicant. He also submits that the Supreme Court in the case of ***Kekhriesatuo Tep & Others vs. National Investigation Agency***, reported in ***(2023) 6 SCC 58***, had dealt in a similar matter as the present case and had distinguished cases of persons, who had indulged in extortion for furthering the activities of the organization, while on the other hand holding that there was another class of persons, who were Government servants, like the respondent, who had been compelled to contribute money to underground factions and could not have been placed in the same category as that of the extortionists. He accordingly submits that the bail granted to the applicant, vide impugned order dated 23.03.2018, should not be interfered with.

6. We have heard the learned counsels for the parties.

7. The facts of the case show that the respondent had been arrested in NIA RC-01/2016/NIA-GUW under Section 384 IPC, Section 25(1-b) Arms Act, Sections 7 & 8 of Nagaland Security Regulations (NSR), Section 13 of Drugs & Cosmetics Act and Section 10 & 13 of UA(P) Act. The respondent submitted his bail application on 19.03.2018 before the Special Judge, NIA, Nagaland. The learned Special Judge, NIA, Nagaland, Dimapur thereafter passed the impugned order dated 23.03.2018 in RC-01/2016/NIA-GUW granting bail to the applicant, who at that time was serving as Joint Director in the Land Resource Department, Government of Nagaland.

8. The issue with regard to the grant of bail in NIA cases in Nagaland, wherein Government officers of various departments had apparently given Government money to underground factions, has been the subject matter of this Court and the Supreme Court, in pursuant to the various bail orders given by the learned Special Court, NIA, Nagaland.

9. In the case of ***Kekhriesatuo Tep (Supra)***, the Supreme Court was seized of various cases wherein the appellant had filed appeals before this Court against bail granted to accused persons by the Special Court, NIA, Nagaland, who were charged with having given Government money to underground organizations. The Division Bench of this Court had allowed the appeals of the appellant and reversed the orders of bail granted to the Government servants. The Government servants thereafter had approached the Hon'ble Supreme

Court, vide the above case ***Kekhriesatuo Tep (Supra)***.

10. The issue before the Supreme Court was whether bail could have been granted by the learned Special Court, NIA, Nagaland under Section 43-D(5) of the UA(P) Act, 1967, when the accused persons had been charged under Sections 39 & 40 of the UA(P) Act, 1967. The Supreme Court, while interpreting the provisions of Section 43-D(5) of the UA(P) Act, 1967, held that while deciding a bail petition filed by an accused against whom offences under Chapter-IV & VI of the said Act had been made, the Court has to consider as to whether there was reasonable grounds for believing that the accusation against the accused were *prima facie* true. Further, a *prima facie* satisfaction had to be arrived that the acts which were committed by the accused, had been committed with the intention to further the activity of a terrorist organisation. The Hon'ble Supreme Court thereafter distinguished persons who indulged in extortion for furthering the activities of an organization and Government servants like ***Kekhriesatuo Tep (Supra)***, who were compelled to contribute money due to the demands made by an underground organization.

11. The facts of the case in ***Kekhriesatuo Tep (Supra)*** is to the effect that Kekhriesatuo Tep, Sangtemchuba and Ketouzo Peseyie had filed three bail petitions, i.e. Criminal Appeal Nos.119/2018, 120/2018 and 121/2018 before the Court of the Special Judge, NIA, Nagaland at Dimapur on being charged under Section 39 & 40 of the UA(P) 1967, for providing funds to underground factions. Thereafter bail was granted to all the above three persons by the Court of Special Judge, NIA, vide order dated 28.03.2018. The bail granted to Mr. Kekhriesatuo Tep, vide order dated 28.03.2018 passed in Criminal Appeal

No.119/2018 was challenged by way of Criminal Appeal No.139/2018. This Court, vide order dated 03.09.2018 disposed of Criminal Appeal No.139/2018, by setting aside the order dated 28.03.2018 and cancelled the bail of Kekhriesatuo Tep.

12. Mr. Kekhriesatuo Tep thereafter went to the Supreme Court and the Supreme Court, vide order dated 12.04.2023, set aside the order dated 03.09.2018 passed in Criminal Appeal No.139/2018, on the ground that the learned Special Judge had distinguished cases of the persons who had indulged in extortion for furthering the activities of the organization and persons like Kekhriesatuo Tep, who were Government servants, who were compelled to contribute to the demands made by the underground organization. The Supreme Court thereafter held that it cannot be said that the *prima facie* opinion expressed by the learned Special Court could be said to be perverse or impossible at the time of granting bail to Kekhriesatuo Tep. It further held that interference by a Appellate Court and particularly in a matter where liberty granted to a citizen was being taken away, would be warranted, only in the event the view taken by the learned Trial Court was either perverse or impossible.

13. Thereafter, vide the judgment passed by the Apex Court in ***Kekhriesatuo Tep (Supra)***, Mr. Kekhriesatuo Tep was allowed to continue to enjoy the bail granted to him pursuant to the order dated 28.03.2018 passed in Criminal Appeal Nos.119/2018, 120/2018 and 121/2018.

14. The respondent herein is similarly situated as Mr. Kekhriesatuo Tep, whose case has been decided by the Supreme Court in ***Kekhriesatuo Tep (Supra)***.

15. The above being said, the respondent had applied for bail prior to him being charge-sheeted under Sections 39 and 40 of the UA(P) Act, 1967, i.e. while the case against him was under Section 10 & 13 of the UA(P) Act, 1967.

16. Section 43D(5) of the UA(P) Act, 1967 is extracted hereinbelow :

“(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.”

17. A reading of the UA(P) Act, 1967 goes to show that Sections 10 & 13 of the UA(P) Act, 1967 is part of Chapter-III and as such, the provision of Section 43-D(5) of the UA(P) Act, 1967 would not be applicable in cases, where bail applications have been made in respect of charges under Sections 10 & 13 of the UA(P) Act, 1967.

18. The applicant has also apparently taken voluntary retirement and has

been on bail since the last 5 (five) years. Further as charge-sheet has already been filed, we do not find that there is any likelihood of the respondent tampering with the evidence. As there is nothing to show that the applicant would abscond and keeping in view the fact that he is similarly situated as Mr. Kekhriesatuo Tep as stated earlier, we are not inclined to interfere with the impugned order dated 23.03.2018 passed by the learned Special Judge, NIA, Nagaland, Dimapur in connection with RC-01/2016/NIA-GUW.

19. The appeal is accordingly dismissed.

20. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant