

GAHC010085472018



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

Case No. : Crl.A./141/2018

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

VERSUS

SHRI KETOUZO PESEYIE
S/O DOLHUKHOU PESEYIE, R/O JOTSOMA VILL. POLICE STATION SECHU,
KOHIMA, NAGALAND.

Advocate for the Petitioner : MR J A HASSAN

Advocate for the Respondent : MD R ALI

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

ORDER

21.08.2023

(M. Zothankhuma, J.)

1. Heard Mr. D.K. Das, learned Senior Counsel assisted by Ms. G.D. Choudhury, learned counsel for the NIA. Also heard Mr. N. Mahajan, learned counsel for the respondent.

2. This appeal has been filed under Section 21(4) of the National Investigation Agency Act, 2018 (hereinafter referred to as the "2008 Act") against the order dated 28.03.2018 passed by the learned Special Judge, NIA, Nagaland at Dimapur in Criminal Appeal No.121/2018 arising out of R.C. 1/16/NIA-GUW granting bail to the respondent.

3. The case of the NIA is that the respondent, who was working in the Directorate of Urban Development, Government of Nagaland as the Executive Engineer/DDO, had directed the DAO of the said Directorate to make payment of money to the NSCN-K and other underground factions, due to the request letters sent by the underground factions to the Directorate.

4. The learned Senior Counsel for the appellant submits that bail was granted to the respondent herein by the common order dated 28.03.2018 passed by the Special Judge in Criminal Appeal Nos.119/2018, 120/2018 and 121/2018. He submits that for disposal of the present appeal, the case pertaining to the respondent is Criminal Appeal No.121/2018.

5. The learned Senior Counsel for the NIA submits that the order dated 28.03.2018 passed by the Court of the Special Judge, NIA, Nagaland at Dimapur had been set aside by this Court, vide order dated 03.09.2018 passed in Criminal Appeal No.139/2018 in respect of one Kekhriesatuo Tep. He submits that a challenge was made by Kekhriesatuo Tep in Criminal Appeal No.119/2018 against the order dated 03.09.2018 passed in Criminal Appeal No.139/2018

before the Supreme Court. The Supreme Court thereafter disposed of the appeal titled as ***Kekhriesatuo Tep etc. vs. National Investigation Agency***, reported in ***2023 SCC OnLine SC 445*** and the order dated 03.09.2018 passed in Criminal Appeal No.139/2018 was set aside.

6. The learned Senior Counsel for the NIA submits that though the Supreme Court set aside the Division Bench judgment of this Court passed in Criminal Appeal No.139/2018, the facts of the case show that the respondent had admitted to paying the underground factions, in his 161 Cr.P.C statement. As such, there was *prima facie* material to connect the respondent with the crime in question, i.e. Section 39 & 40 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the "1967 Act"). The learned Senior Counsel thus prays that the order dated 28.03.2018 passed in Criminal Appeal No.121/2018 granting bail to the respondent should be set aside.

7. Mr. N. Mahajan, learned counsel for the respondent, on the other hand submits that the respondent herein is similarly situated as the appellant in ***Kekhriesatuo Tep etc. (Supra)***. Further, the Supreme Court had set aside the order dated 03.09.2018 passed in Criminal Appeal No.139/2018 which had set aside the order dated 28.03.2018 passed in three bail applications, one of them being the respondent's bail application (Crl.No.121/2018). He submits that in view of the above, the Supreme Court decision would also cover the case of the respondent herein and accordingly the bail granted to the respondent should not be interfered with.

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

9. The facts of the case show that Kekhriesatuo Tep, Sangtemchuba and the petitioner 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 1967 Act, 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 08.03.2018. 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.

10. Mr. Kekhriesatuo Tep thereafter went to the Supreme Court and the Supreme Court vide its order dated 12.04.2023 passed in ***Kekhriesatuo Tep etc. (Supra)*** 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 the persons like Kekhriesatuo Tep, who were Government servants 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.

11. Thereafter, vide the judgment passed by the Apex Court in ***Kekhriesatuo Tep etc. (Supra)***, Mr. Kekhriesatuo Tep has continued 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.

12. An order dated 22.05.2023 passed in Criminal Appeal No.155/2018 has been submitted to this Court, wherein it shows that the NIA has withdrawn the Criminal Appeal filed against the order dated 28.03.2018 passed in Criminal Appeal No.120/2018 in respect of one Mr. Sangtemchuba.

13. The above being said, it is clear that the respondent herein is similarly situated as Mr. Kekhriesatuo Tep, whose case has been decided by the Supreme Court in ***Kekhriesatuo Tep etc. (Supra)***. The supplementary charge-sheet filed by the NIA against the respondent on 31.05.2018, shows that the NIA had recovered many incriminating documents of NSCN-K and other terrorist organizations. The request letter which was served by the underground factions to the Directorate of Urban Development, Government of Nagaland showed that the respondent had endorsed the same to the DAO, i.e. Sangtemchuba, who was the person granted bail in Criminal No.120/2018. Further, the appeal filed by the NIA against the bail granted to Sangtemchuba had been withdrawn, vide order dated 22.05.2023 passed in Criminal Appeal No.155/2018.

14. In view of the facts stated above, it is apparent that the respondent is

similarly situated as Mr. Kekhriesatuo Tep and Mr. Sangtemchuba. We are aware that bail can only be granted under Section 43 D (5) of the 1967 Act. We find that the bail granted by the learned Special Judge has been upheld in respect of Mr. Kekhriesatuo Tep by the Supreme Court vide ***Kekhriesatuo Tep etc. (Supra)***.

15. It is also clear that though the respondent had been on bail since 28.03.2018, the respondent has not absconded or tampered with the evidence within these 5 years. Further, the case against the respondent is at the trial stage and charge-sheet has already been filed against the respondent. Charge has also been framed against the respondent.

16. In view of the reasons stated above, we do not find any ground to interfere with the impugned order dated 28.03.2018 passed by the learned Special Judge, NIA, Nagaland at Dimapur in Criminal Appeal No.121/2018.

17. The appeal is accordingly dismissed.

JUDGE

JUDGE

Comparing Assistant