

GAHC010181832023



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

Case No. : Bail Appln./2916/2023

MAZIBAR RAHMAN @ MUZIBAR RAHMAN AND 2 ORS.
S/O LATE HASEN ALI
VILL- SAPRA, P.S. BARPETA
DIST. BARPETA, ASSAM

2: DEWAN HAMIDUL ISLAM
S/O DEWAN MATIUR RAHMAN
VILL- SALEKURA
P.S.BARPETA

DIST.BARPETA
ASSAM

3: KAJIBAR HUSSAIN @ KAJIBUR HUSSAIN
S/O SAMSER ALI
VILL- UTTAR CHAPRA
P.S.BARPETA

DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

08.12.2023

Heard Mr. A.M. Borah, learned senior counsel assisted by Mr. V.A. Choudhury, learned counsel for the accused and Mr. K.K. Parasar, learned Addl. P.P. for the State respondent.

2. This application, under Section 439 of Cr.P.C., is preferred by accused, namely, Mazibur Rahman @ Muzibar Rahman, Dewan Hamidul Islam and Kajibur Hussain @ Kajibur Hussain, who have been languishing in jail hazot since **28.07.2022**, in connection with **Barpeta P.S. Case No. 763/2022**, under **Sections 120(B)/121/121A IPC**, read with **Sections 17/18/18(B)/19/20 of the Unlawful Activities (Prevention) Act**, for granting bail.

3. The said case has been registered on the basis of one FIR lodged by one Shri Ranjan Doley, Inspector of Police, Barpeta P.S. to the effect that during investigation of the Barpeta P.S. Case No.268/2022, under Sections 120(b)/121/121A of the IPC, read with sections 17/18/18(B)/19/20 of Unlawful Activities (Prevention) Act, 1967, read with Section 12(1)(C) of the Passport Act and Section 14A(b) of the Foreigners Act and Barpeta P.S. Case No.419/2022, under Sections 120(b)/121/121A IPC, read with Section 17/18/18(B)/19/20 of Unlawful Activities (Prevention) Act, 1967, regarding existence of an important Jihadi (terror) outfit based in Bangladesh and operating in Barpata District. It

was learnt that several modules of the proscribed Ansarullah Bangla Team (ABT) having affiliation to Al-Qaeda in the Indian Sub-Continent (AQIS) are active in Barpeta District and that members/supporters of ABT were indoctrinating and motivating the youth/men of Barpeta to join Jihadi outfits and work in modules 'Ansas' (sleeper cells) for creating a base for Al-Qaeda and its manifestations in various form of names and styles in India, all of which are declared terrorist organizations in India as per the provisions of Unlawful Activities (Prevention) Act. It was also found that these modules, comprising of one Jubair Khan, Rafiqul Islam, Dewan Hamidul Islam, Mainul Hoque, Kazibur Hussain, Muzibaur Rahman, Shahanur Alam, Sahjahan Ali and others, have hatched criminal conspiracy with other members of the ABT along with a group of men/youths of the District for facilitating further training of indoctrinated youths/men for waging Jihad and related terrorist activities in the District. They are working towards advocating, abetting, inciting, assisting, harboring, recruiting and collecting funds for organizing and committing unlawful and terrorist activities in the name of Jihad.

4. Mr. A.M. Borah, the learned counsel for the accused submits that the accused were arrested on 29.07.2022, and since then they have been languishing in jail hazoot for last 495 days. Further, Mr. Borah submits that no incriminating materials have been recovered from the possession of the accused persons and that they are not member of Ansarul Bangla Team (ABT) and the said organization is not a banned organization. Referring to the case of **Union of India vs. K.A. Nazib** reported in **(2021)3 SCC 713** and **National Investigating Agency vs. Zahoor Ahmed Shah Watali** reported in **(2019) 5 SCC 1**, Mr. Borah further submits that the bar of section 43[D][5] will not come into play here in this case as the allegation leveled against the accused

are false. Mr. Borah further submits that the case has already been charge sheeted and that as many as 56 witnesses have been cited in the charge sheet and though charge have been framed against the accused persons on 27.07.2023, till date only one witness is examined by the court below and there is no immediate chance of completion of trial and that co-accused have already been enlarged on bail. Referring to the materials collected in the charge sheet Mr. Borah further submits that the same are not sufficient to frame charge against the accused persons and that the present accused are innocent and they will appear before the court regularly and therefore, it is contended to allow this petition.

5. On the other hand Mr. K.K. Parasar, learned Addl. P.P. has opposed the petition on the ground that having found sufficient materials against the accused persons the learned court below has framed the charge only on 27.07.2023, and one witness has already been examined by the learned court below. Mr. Parasar further submits that if enlarged on bail they may commit similar offence and there is also possibility of jumping bail, and therefore, it is contended to dismiss the petition.

6. Having heard the learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record of the learned court below.

7. It appears that the accused were arrested on 29.07.2022, and since then they have been languishing in jail hazoot for last 495 days. It also appears that the learned court below has framed charge against the accused persons under sections 18/19/20 of UA (P) Act and till date only one witness has been examined by the learned court below out of 56 witnesses cited in the charge

sheet. Whereas, it appears from the record of the learned court below that the accused are languishing in jail since 29.07.2022. As large numbers of witnesses are cited in the charge sheet there is no likelihood of trial being completed within reasonable time.

8. Though the learned court below had framed charge against the accused persons under sections 18/19/20 of UA (P) Act, and that the bar of Section 43(D) (5) of the UA(P) Act is applicable yet, it has been well settled in the case of **K.A. Nazib (supra)** it is held that Section 43(D)(5) of the UA(P) Act merely provides another possible ground for competent Court to refuse bail, in addition to the well settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses and chance of the accused evading the trial by absconding, etc. And in the case of **Zahoor Ahmed Shah Watali (supra)** it has been held that the degree of difference between the satisfactions to be recorded by the court is different and lighter from other special statute like TADA, MCOCA and NDPS Act.

9. Having considered above, and also having adjudged the submissions of learned Advocates of both sides and having gone through the materials collected in the charge sheet, and further, and having reckoned the materials seized from the possessions of the accused persons and the materials available in the case diary as a whole, and further balancing the period of detention with that of the nature and gravity of the offence this Court is of the view that a prima facie case for granting bail to the accused persons is made out.

10. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- (Rupees fifty thousand) only, with one surety of like amount to the satisfaction of the learned Sessions Judge, Barpeta, the accused persons, namely Mazibur

Rahman @ Muzibar Rahman, Dewan Hamidul Islam and Kajibur Hussain @ Kajibur Hussain, shall be enlarged on bail, in connection with the Barpeta P.S. Case No. 763/2022. It is being clarified that the above observations, made herein above, is only for the purpose of disposing of this bail application not on the merit of the case.

11. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant