

GAHC010186512023



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

Case No. : Bail Appln./2967/2023

NOOBA MEITEI AND ANR.
S/O SHRI JOY MEITEI
R/O VILL- PATLOU
P.S. SAGOLMUNG
DIST. IMPHAL EAST, MANIPUR

2: MD. WARISH
S/O MD. IBOMCHA
R/O VILL- THANGIAM KHUNOU
P.S. SAWOMBUNG
DIST. IMPHAL EAST
MANIPUR

VERSUS

THE STATE OF ASSAM
REP. BY THE SPL. PP, WILDLIFE, ASSAM

Advocate for the Petitioner : MR. P BORDOLOI

Advocate for the Respondent : SPL PP WILDLIFE FOREST ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

12.10.2019

Heard Mr. P. Bordoloi, learned counsel for the accused and also heard Mr. D.

Gogoi, learned standing counsel, Wildlife, Assam, appearing for the State respondent.

2. This application, under Section 439 Cr.P.C. is preferred by two accused, namely, Nooba Meitei and Md. Warish, who have been languishing in jail hazot since 05.03.2023, in connection with Special Wildlife Case No.02/2023, arising out of Office Report No.CR/08 of 2022-23, dated 05.03.2023, under Section 44, 48(A), 49, 49(B) and 51 of the Wildlife (Protection) Act, 1972, for grant of bail.

3. It is to be noted here that the above-noted case has been registered on the basis of one complaint lodged by the Assistant Conservator of Forests, Central Range, Manja. The essence of allegation made in the aforesaid complaint is that on 05.03.2023, at about 1:30 p.m. they were carrying two numbers of juvenile primate species, illegally in a TATA 1512 Truck, bearing Registration No.AS-01PC-2917.

4. Mr. Bordoloi, learned counsel for the accused submits that the accused persons were arrested on 05.03.2023, and since then they have been languishing in jail hazot and that after completion of investigation offence report has already been submitted before the learned Court below and the learned Court below has examined as many as 3(three) witnesses till date and that the accused are ready to face trial and they will appear before the learned Court below on each and every date. Mr. Bordoloi further submits that the species recovered from the possession of the two accused are primate and they have been identified as Moor Macaque, an exotic species, as identified by the Forest Veterinary Officer of Assam State Zoo and that they are not the listed species in the schedule of Wildlife (Protection) Act, 1972 and as such Wild Life department has nothing to do with the same and at best it ought to have been transferred to the Custom Department and that this Court while dealing with Bail Appln. No.1611/2020, dated 20.08.2020, had held that exotic species will not come under the Wildlife (Protection) Act, 1972 and therefore, Mr. Bordoloi contended to allow the accused to go on bail. Mr. Bordoloi has referred following decision in support of his submission:-

Adwitiya Chakravarty vs. Union of India, reported in **2022 LiveLaw (Tri)**
40.

5. On the other hand, Mr. D. Gogoi, learned standing counsel, Wildlife, Assam, submits that both the accused hails from Manipur and that the trial is about to complete and in the event of their release at this stage it would be difficult to procure their attendance and there is every possibility of jumping bail and that the Wildlife (Protection) Act has been amended in Assam and now all the offences under the Wildlife (Protection) Act are cognizable and non-bailable and unless the Court is satisfied that there is reasonable ground for believing that the accused are not likely to commit any offence while on bail, this Court is not entitled to enlarge the accused on bail, in view of the provision of Section 51B(2)(b) of the Wildlife (Protection) (Assam Amendment) Act, 2009 and there is nothing on the record to show that the accused are not likely to commit any offence while on bail and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record and also perused the scanned copy of the record receipt from the learned Court below.

7. It is not in dispute that the accused persons were arrested on 05.03.2023, and since then they have been languishing in jail hazot. The scan copy of the record of the learned court below reveals that after completion of investigation offence report had already been submitted before the learned Court below and the learned Court below had taken cognizance of the offence and now trial is going on. It also appears from the scan copy of the record that the learned Court below had already examined 3(three) prosecution witnesses and there remains to examine only one witness, and as such the trial is at the last stage. And if the accused are released on bail at this stage, it will cause delay in disposing of the case.

8. Besides, on the basis of materials placed on record, this Court is unable to

derive its satisfaction that the accused persons will not commit any offence while on bail. Moreover, in the given facts and circumstances on the record, it cannot be said that the trial is protracted and thereby their right to speedy trial is impaired here in this case.

9. I have considered the submission of Mr. Bordoloi, the learned counsel for the accused persons and in view of the discussion, so made herein above, I am in respectful disagreement with the same. Also I have gone through the case laws referred by him and find that the same would not advance his argument. In Bail Application No. 1611/2020, this court has held that seized animals in the said case does not come under the purview of Wild Life (Protection) Act, in view of the forwarding report of the Range Forest Officer, Hawaithang, Dolai. But, the very basis of such finding is not based upon any discussions on the relevant provisions of law. That being so, the finding in the said Bail Application, would not come into aid of the learned counsel for the accused. In the case of **Adwitiya Chakravarty (supra)** it has been held that domestic trade, possession, transportation and breeding of undeclared exotic animals/exotic birds within India continues to be out of purview of wild life (Protection) Act. Here in this case there is no definite opinion of the expert in regards to whether the seized animals are exotic animal or not, except, however, the opinion of a veterinary Doctor of the State Zoo, Assam. Unless opinion of Wild Life Expert is made available in this regard, it would be not prudent to arrive at such a finding.

10. Under the aforesaid facts and circumstances, this Court is of the considered view that this is not a fit case where the privilege of bail can be granted to the accused and accordingly, the bail application stands dismissed.

11. However, the learned Court below is directed to expedite the trial and to complete the same as early as possible preferably within a period of 3(three) months from today and if necessary, the learned Court below shall take recourse to Section

309(1) of the Cr.P.C.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant