

GAHC010243752023



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

Case No. : Bail Appln./4015/2023

MUSTAFA @ MUFTI MUSTAFA,
S/O RUSTOM ALI,
R/OVILL- SAHARIA GAON,
P.S. MOIRABARI, DIST. MORIGAON, ASSAM.

--VERSUS--

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

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : PP, ASSAM

- B E F O R E -

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER

19.12.2023

- 1.** Heard Ms. S.K. Nargis, learned counsel for the petitioner. Also heard Ms. A. Begum, learned Additional Public Prosecutor, Assam.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Mustafa @ Mufti Mustafa, who has been detained behind the bars since 27.07.2022 (i.e. for last 510 days) in connection with Sessions (Special) Case No.04/2023 arising out of Moirabari P.S. Case No.156/2022 under

Sections 201/121/121(A) of Indian Penal Code read with 18/18(A)/18(B)/19/20/38/39/40 of the Unlawful Activities (Prevention) Act, 1967, which is pending before the learned Sessions Judge, Morigaon.

3. The accusation in this case is that on 27.07.2022, one Sri Jitendra Basumatary, SI of Police of Moirabari Police Station lodged an FIR before the Officer-in-Charge of Moirabari Police Station, *inter alia*, alleging that on the basis of specific information it was reliably learnt that the petitioner, namely, Mustafa @ Mufti Mustafa, S/o Rustom Ali of Village- Saharia Gaon, Ward No. 6 under Moirabari Police Station was acting as an important financial conduit of the recently busted Ansarullah Bangla Team (ABT) module in India. It is also alleged that the ABT is linked to Al Qaeda in Indian Subcontinent (AQIS) which is a Terrorist Organization as per the Unlawful Activities (Prevention) Act, 1967. It is also alleged in the FIR that the accused runs a Madrassa at Saharia Gaon and he had several financial transactions linked with arrested ABT members and leaders for past several years. It is also alleged in the FIR that the accused Mustafa @ Mufti Mustafa is associated with the "Saruchala-Al-Jamiatush Shalihah Madrassatul Bannat Saruchala" and it is believed that both the places were used for carrying out activities of the ABT module. It was also alleged that the said accused had provided shelter and harboured absconding members of the ABT module in India. The said accused is stated, in the FIR, to be an active member of the ABT in India and has been actively raising funds for carrying out the unlawful activities of ABT. It is also alleged that the activity of the Madrasa are being funded through the proceeds of unlawful activities and it is further stated in the FIR that there are reasonable causes to suspect that the money raised by the accused is being used for the purpose of terrorism.

4. On receipt of the FIR, Moirabari P.S. Case No.156/2022 was registered and an investigation was initiated and ultimately, on completion of the investigation, the charge-sheet was laid against the present petitioner under Sections 18/18A/18B/19/20/38/39/40 of Unlawful Activities (Prevention) Act, 1967 and

201/121/121A of the Indian Penal Code.

5. Learned counsel for the petitioner has submitted that on 18.11.2023, the learned Trial Court had framed charges under Section 13 of the Unlawful Activities (Prevention) Act, 1967 and Sections 121/123/153/153A/153B/120B/37 of Indian Penal Code against the accused persons facing trial including the present petitioner.

6. Learned counsel for the petitioner has submitted that as the offence under Section 13 of the Unlawful Activities (Prevention) Act, 1967 falls within Chapter III of the said Act, the embargo of Section 43(D)(5) of the said Act, is not applicable to an offence under Section 13 of the said Act. It is also submitted by the learned counsel for the petitioner that all the other accused persons, in the meanwhile, have been enlarged on bail.

7. Learned counsel for the petitioner has further submitted that the petitioner is ready to co-operate in the trial and face the same if he is enlarged on bail. Learned counsel for the petitioner has also submitted that there is no justification in keeping the present petitioner behind the bars after his prolonged detention for about 510 days.

8. On the other hand, Ms. A. Begum, learned Additional Public Prosecutor, Assam has opposed the grant of bail to the present petitioner on the ground that there are incriminating materials against the present petitioner and witnesses are yet to be examined in the case pending against him.

9. I have considered the submissions made by the learned counsel for both the sides and have gone through the scanned copy of the case record of Sessions (Special) Case No.04/2023 which was called for in connection with this case. As there is no embargo in grant of bail to the present petitioner after framing of charges under Section 13 of the Unlawful Activities (Prevention) Act, 1967 and other provisions of Indian Penal Code against the present petitioner and as the other co-accused persons have been already released on bail, in the meanwhile, this Court does not find any justification to keep the present petitioner under continued detention if he otherwise

co-operates in his trial.

10. In view of above, the present petitioner, namely, Mustafa @ Mufti Mustafa is hereby allowed to go on bail of Rs.30,000/- (Rupees thirty thousand) with two sureties of like amount, subject to the satisfaction of learned Sessions Judge, Morigaon with the following conditions:

- (i) that the petitioner shall co-operate in the trial of Sessions Case No.4/2023 which is pending before the Court of learned Sessions Judge, Morigaon and shall appear before the learned Trial Court as and when so required by the learned Trial Court.
- (ii) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person who is acquainted with the facts of this case so as to dissuade such person from deposing against him in the pending trial against him.
- (iii) that during the pendency of the trial of Sessions (Special) Case No.04/2023, the petitioner shall not leave the State of Assam without prior permission from the learned Sessions Judge, Morigaon.

11. With the above observations, the present bail application is hereby disposed of.

JUDGE

Comparing Assistant