

GAHC010259882023



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

Case No. : I.A.(Civil)/3404/2023

FAJIRAN BEGUM @ FAJIRAN NECHA @ FAJARI BEGUM
W/O- LATE KITAP ALI, D/O- RASTUM ALI @ RUSTUM ALI, VILL-
BHERBHERI, P.S- BARAMA, DIST- BAKSA, BTAD, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 781006

3:THE SUPERINTENDENT OF POLICE (B)
BAKSA
MUSHALPUR
ASSAM
PIN- 781343

4:THE DEPUTY COMMISSIONER
BAKSA
MUSHALPUR
BTAD
ASSAM
PIN- 781343

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

6:THE STATE COORDINATOR
NRC
ASSAM
BHANGAGARH
GUWAHATI- 781005

7:THE FOREIGNERS TRIBUNAL
BAKSA
TAMULPUR
P.O- TAMULPUR
DIST- BAKSA
BTAD
ASSAM
PIN- 78136

Advocate for the Petitioner : MS. D GHOSH

Advocate for the Respondent : ASSTT.S.G.I.

Linked Case : WP(C)/7779/2019

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D/O- RASTUM ALI @ RUSTUM ALI
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Advocate for : MR. S C PANDIT
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 6 ORS

BEFORE

**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MRS. JUSTICE MITALI THAKURIA**

21/11/2023

(M.R. Pathak, J)

Heard Ms. D Ghosh, learned Amicus Curiae for the applicant and Ms. A Gayan, learned Central Government Advocate, Assam for the opposite party No. 1. Also heard Mr. J Payeng, learned Standing counsel, Home Department, Assam for the respondent Nos. 2 & 3; Mr. P Sarma, learned Additional Senior Government Advocate, Assam for the respondent No. 4 and Mr. A I Ali, learned Standing counsel, Election Commission of India for the respondent No. 5.

2. By the impugned opinion/order dated 13.05.2019, the learned Member, Foreigners' Tribunal, Baksa, Tamulpur, Assam in F.T. Case No. 717/Baksa/2016 declared the petitioner to be a foreigner, who had illegally entered into the territory of India (Assam) on or after 25.03.1971 from the specified

territory of Bangladesh.

3. Being aggrieved with the said impugned opinion/order dated 13.05.2019, the petitioner preferred the connected WP(C) No. 7779/2019, wherein the Court on 26.02.2020 requisitioned the records of said F.T. Case No. 717/Baksa/2016 from the learned Member, Foreigners' Tribunal, Baksa, Tamulpur, Assam and in the interim directed the opposite parties/respondent authorities not to take her into custody and deport from India subject to the condition of her appearance before the Superintendent of Police (Border), Baksa within 15 (fifteen) days from the date of the said order dated 26.02.2020 and on furnishing a bail bond of Rs.5,000/- with one local surety of the like amount to the satisfaction of the said authority.

4. By the said order dated 26.02.2020, the Superintendent of Police (Border), Baksa also directed that on appearance of the petitioner, the biometrics of the iris of her both eyes, the fingerprints of her both hands and her photograph were to be obtained and thereafter, she was allowed to remain on bail, fixing the matter on 22.04.2020.

5. Though, the matter was listed on 27.04.2020, but there was no representation on behalf of the petitioner. Thereafter, on 05.08.2021, when the matter was called for, even on the said date, the petitioner remained unrepresented. On 17.11.2021, the matter was again listed, but as the petitioner remained unrepresented, the Court engaged learned counsel, Ms. D Ghosh as an Amicus Curiae to render assistance in the matter for the proceedee/petitioner observing that the interim order passed earlier (26.02.2020) shall continue.

6. It is stated that though an interim order was passed on 26.02.2020 in the connected WP(C) No. 7779/2019; but due to communication gap between the petitioner and her engaged counsel, she was not aware about the said order and failed to appear before the Superintendent of Police (Border), Baksa within 15 (fifteen) days from the date of the said order dated 26.02.2020. As such, she was taken into custody on 31.10.2023 and presently kept in the Detention Camp at Matia, Goalpara.

7. By this Interlocutory Application, the applicant/writ petitioner has prayed for her release from the Goalpara Detention Camp, enabling her to go on bail in terms of the interim order dated 26.02.2020 passed earlier in the connected WP(C) No. 7779/2019.

8. The learned counsels for the respondents have no objection in releasing the petitioner on bail, who is in the detention camp at Matia, Goalpara.

9. Considering the fact that the Court earlier on 26.02.2020 allowed the applicant/petitioner to remain on bail subject to the compliance of the directions specified therein, which she failed to comply because of communication gap between her and her counsel for which she was not aware of the order dated 26.02.2020, we are of the view that the applicant/petitioner of the connected WP(C) No. 7779/2019 is entitled for her release on bail forthwith in terms of the said order dated 26.02.2020, noted above, subject to the condition of furnishing a bail bond of Rs.5,000/- with one local surety of the like amount to the satisfaction of the said authority.

10. Before her such release on bail, the Superintendent of Police (Border), Baksa shall obtain necessary information and documentation as required under the Rules as well as the biometrics of the iris of both eyes, the fingerprints of both hands and the photographs of the petitioner for securing her presence and thereafter, she shall be allowed to remain on bail.

11. It is made clear that without giving full details of the applicant's/petitioner's present address and/or destination before the Superintendent of Police (Border), Baksa and without obtaining any prior written permission from the said authority, she shall not leave the jurisdiction of said SP (Border), Baksa.

12. Failure on the part of the applicant/petitioner to comply with the aforesaid directions, the bail granted to her shall stand automatically vacated and she shall be liable to be taken back into custody.

13. With the above observation and direction, this Interlocutory Application stands disposed of.

JUDGE

JUDGE

Comparing Assistant