

GAHC010264282022



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

Case No. : Bail Appln./3624/2022

RAFIQUL ISLAM
S/O ABDUL SABUR
R/O VILL- GOREMARI
P.O. AND P.S. BARPETA
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B D KONWAR SR. ADV.

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

04.01.2023.

Heard Mr. B.D. Konwar, learned Senior Advocate, being assisted by Ms. M. Zomuanpuui, learned counsel for the accused. Also heard Mr. R.J. Baruah,

learned Addl. P.P., Assam, appearing for the State respondent.

2. This application, under Section 439 of Cr.P.C., is preferred for the second time by accused, namely, Md. Rafiqul Islam, who has been languishing in jail hazoot 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, 1967, since 28.07.2022.

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) 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 Jehadi (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 Jehadi outfits and work in modules 'Ansas' (sleeper cells) for creating a base for Alqueda 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, Sahnur 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. B.D. Konwar, learned Senior Advocate submits that this is the second application, preferred by the accused and that the earlier one was rejected by this Court after perusing the case diary, vide order dated 09.11.2022, in BA No.2478/2022, on the ground that after rejection of the said application on 09.11.2022, about two months elapsed and that in the meantime, the father of the accused expired and the accused has to perform his last rites and that the accused is a student and he will appear in the forthcoming H.S. Examination, scheduled to be held from 20.02.2023 and therefore, it is contended to allow the petition. Further, Mr. Konwar submits that no incriminating materials have been recovered from the possession of the accused and though some Books have also been recovered from his house and the same are not associated with any terrorist organizations.

5. On the other hand, Mr. RJ Baruah, learned Additional Public Prosecutor, Assam, by producing the case diary before this Court submits that, this Court was pleased to reject the earlier bail application of the accused, after perusing the case diary and there is sufficient material against the accused in the case diary and therefore, it is contended to dismiss the petition.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the Case Diary with the assistance of Mr. Baruah, learned Additional Public Prosecutor.

7. It appears that the father of the accused, namely, Abdul Sabur died on 13.12.2022, due to Neurogenic Shock, and it is apparent from Annexure-6, annexed with the petition at Page 29. Further, it appears that the accused is a student and he will appear in the forthcoming H.S. Examination, scheduled to be held from 20.02.2023, which is apparent from the Admit Card and the Programme, enclosed with the petition as Annexure-5 series. It also appears from the seizure list dated 28.07.2022, that the I.O. has seized two mobile phones from the accused and total 25 numbers of books from his house. But, there is nothing in the case diary to show that the said books related to any terrorist organization or terrorist activities. Further, it appears that the accused is behind the bar for last 160 days and the I.O. got sufficient time after rejection of the first bail petition.

8. It is however a fact that the earlier bail application was rejected having found sufficient materials against the accused in the case diary and the stage of investigation and the nature and gravity of the offence, however without commenting on the existence of reasonable ground for believing that the accusation are prima facie true or not. But, having gone through the materials collected so far in the case diary and having considered the submissions of learned Advocates of both sides, this Court is unable to derive its satisfaction that there exist any reasonable ground for believing that the accusation against the accused is prima facie true. This being the position, the bar of Section 43(D) (5) of the UA(P) Act would not stand in the way of granting the privilege of bail to the accused. Be it mention here that Section 43(D)(5) of the UA(P) Act is less stringent than that of Section 37 of the NDPS Act, as held by a three Judge Bench of Hon'ble Supreme Court in **Union of India vs. K.A. Najeed**, reported in **(2021) 3 SCC 713**, where 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.

9. Having considered the period of detention and also considering the fact that the accused has to perform the last rites of his father and further considering the fact that he will appear in the forthcoming H.S. Examination, scheduled to be held w.e.f. 20.02.2023, and further the stage of investigation, this Court is inclined to allow this petition.

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 person, named above, shall be enlarged on bail, in connection with the Barpeta P.S. Case No.763/2022.

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

The case diary be returned.

JUDGE

Comparing Assistant