

GAHC010044902023



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

Case No. : Bail Appln./3633/2022

MUSSTT ASMINA KHATUN
W/O MD. MUSTAFA
R/OVILL- SAHARIA GAON
P.S. MOIRABARI
DIST. MORIGAON
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MS. S K NARGIS
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 06.07.2023

- 1.** Heard Ms. S. K. Nargis, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.
- 2.** This case is fixed for delivery of orders today.

3. This application under Section 439 of the Code of Criminal Procedure, 1973 filed by the petitioner, namely, *Musstt. Asmina Khatun*, who has been detained behind the bar since 02.08.2022 in connection with Sessions (Special) Case No. 4/2023 corresponding to Moirabari P.S. Case No. 156/2022 under Sections 120B/201/121/121A of the Indian Penal Code read with Sections 18/18A /18B /19 /20 /38 /39 /40 of the Unlawful Activities (Prevention) Act, 1967.

4. 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 a person, namely, Mustafa @ Mufti Mustafa, S/o Rustom Ali of Village- Saharia Gaon, Ward No. 6 under Moirabari Police Station was acting 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 Qaida 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 Shalihat 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 Madrassa are being funded through the proceeds of unlawful activities and it is further stated

in the FIR that there are reasonable cause to suspect that the money raised by the accused is being used for the purpose of terrorism.

5. On receipt of the said FIR, Moirabari P.S. Case No. 156/2022 was registered and investigation was initiated. During the course of investigation, the present accused who is the wife of the FIR named accused, Mustafa @ Mufti Mustafa was also arrested.

6. On 21.03.2023, the Investigating Officer had laid the charge-sheet against the 9(nine) Nos. of accused persons including the present petitioner before the Court of Special Judge, Morigaon, under Section 120B/201/121/121A of the IPC Act read with Sections 18/18A/18B/19/20/38/39/40 of the Unlawful Activities (Prevention) Act, 1967 and as per the latest status report dated 26.05.2023 received from the learned Special Judge, Morigaon as well as information given by learned Additional Public Prosecutor, the Sessions (Special) Case No. 4/2023 is fixed for consideration of charges and hearing on consideration of charges is going on in the trial court.

7. Learned counsel for the petitioner has submitted that the present accused petitioner has been implicated in the instant case only because of the fact that she is the wife of the prime accused Mustafa @ Mufti Mustafa. She has also submitted that the only allegation against her is that she had destroyed the mobile phone of her husband who is the main accused in this case.

8. The learned counsel for the petitioner has also submitted that as there is no material on record which would lead to an inference that accusation against her of committing offence under Sections 18/ 18A/ 18B/ 19/ 20/ 38/ 39/ 40 of the Unlawful Activities (Prevention) Act, 1967 are, *prima facie*, true, therefore, the embargo of Section 43 D(5) of the Unlawful Activities (Prevention) Act, 1967

would not be applicable in case of the present petitioner. Learned counsel for the petitioner has also submitted that learned trial court has taken cognizance of offence under chapter IV and VI of the Unlawful Activities (Prevention) Act, 1967 without previous sanction of the government in violation of Section 45 of the said Act. She has also submitted that Ansarullah Bangla Team (ABT) is not a terrorist organization and it is not listed in the first schedule to the Unlawful Activities (Prevention) Act, 1967.

9. On the other hand, Mr. R. J. Baruah, learned Additional Public Prosecutor submits that there are materials in the case diary against the present petitioner regarding misleading the Police by stating false information regarding the mobile phone of her husband who is the main accused in this case and also willfully damaging the mobile phone so as to conceal the important evidence against the accused persons. He also submits that as the charge-sheet has already been laid against the present petitioner, therefore, there is a, *prima facie*, case against her for committing offences under Chapter IV and VI of the Unlawful Activities (Prevention) Act, 1967 and hence the embargo of Section 43 D (5) is applicable in case of the present petitioner.

10. To counter the submission of learned Additional Public Prosecutor, the learned counsel for the petitioner has cited a ruling of a Full Bench of this Court in "***Rojen Boro and Anr. –Vs- National Investigation Agency and Anr.***" reported in "***2016 (4) GLT (FB) 803***", wherein it was held that a person accused for an offence punishable under Chapter IV and VI of the Unlawful Activities (Prevention) Act, 1967 and who is under detention would be entitled to a consideration of bail under Section 43 D(5) of the said Act, irrespective of the fact that as to whether charge is framed against the accused or not, subject of course to the limitations imposed by the said provisions and having regard to

the object thereof.

11. I have perused the case diary of Moirabari P.S. Case No. 156/2022 as well as scanned copy of the case record which was requisitioned by this Court from the learned Trial Court.

12. It appears that the present petitioner, who is a woman, has been detained behind the bar since last 338 days. Though, a detailed elaboration of the evidence at the stage of grant or rejection of application for bail has to be avoided in as much as, same may have an effect on the rights of the parties at the trial, however, I am referring to a bare minimum facts which are necessary for consideration of the present application.

13. Though, the charge-sheet has been laid against the accused persons including the present petitioner under sections 120B/201/121/121A of the IPC Act read with Sections 18/18A/18B/19/20/38/39/40 of the Unlawful Activities (Prevention) Act, 1967, *it appears that the main allegation against the present petitioner is that she had made a conspiracy to destroy the mobile phone of her husband to conceal important evidence hence, though there may be material against her under Section 201/120B of the Indian Penal Code, however, in absence of any cogent materials on record, there is no reasonable ground for believing that the accusation made against her under Section 18 of the Act, that is, for the offence of conspiracy or attempting to commit or advocating or abating, advising or facilitating commission of a terrorist Act by her is true. Similarly, on the basis of materials on record that there is also no reasonable ground for believing that the accusation against the present petitioner regarding organizing terrorist camp or for recruiting any person or persons for terrorist Act or to show that she is a member of terrorist gang or terrorist organization which is involved in terrorist Act so as to believe that the accusation against her under*

Section 18B/19/20 of the said Act to be true. Similarly, there is no materials to show that present petitioner has been involved in the offence under Section 39 of the Unlawful Activities (Prevention) Act, 1967 relating to support given to a terrorist organization or of offence of raising fund for terrorist organization so as to believe that the accusation against her under Section 39/40 of the Unlawful Activities (Prevention) Act, 1967 to be true. Thus, on the basis of material placed before this Court, at this stage, this Court is constrained to observe that there are no reasonable grounds for believing that the accusation against the present petitioner, namely, Musstt. Asmina Khatun, made in the charge-sheet under Section 18/ 18A/ 18B/ 19/ 20/ 38/ 39/ 40 of the Unlawful Activities (Prevention) Act, 1967 are, prima facie, true. Hence, the embargo of Section 43 D (5) of the Unlawful Activities (Prevention) Act, 1967 is not applicable in case of present petitioner. There may be material against the present petitioner for commission of offence under Indian Penal Code. However, considering the fact that the petitioner has already been detained behind the bar since 338 days and also considering the fact that she has an infant bay who is with her inside the jail, and that she is also a permanent resident of Saharia Gaon under Moirabari Police Station, her further custodial detention does not appear to be necessary for fair completion of trial in Sessions (Special) Case No. 4/2023, if she cooperates in her trial.

14. For reasons stated above, the petitioner, namely, *Musstt. Asmina Khatun*, is allowed to be released on bail of Rs.30,000/- (Rupees Thirty Thousand) only with two sureties of like amount to the satisfaction of learned Special Judge, Morigaon, subject to the following conditions:-

- (1) That the petitioner shall cooperate in her trial before the Trial Court in Sessions (Special) Case No. 4/2023 and shall appear before the Trial Court

as and when so directed by the learned Sessions Judge/ Special Judge, Morigaon.

(2) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts before the Trial Court.

15. It is hereby made clear that the observations made herein above by this Court has been made only for the purpose of consideration of the instant bail petition and same shall have no bearing on the Trial Court to independently assess the material available on record during consideration of the charges against the present petitioner or during any other stage of the trial of the Sessions (Special) Case No. 4/2023

16. With the above observations, this instant bail application is accordingly disposed of.

JUDGE

Comparing Assistant