

GAHC010051722024



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

Case No. : W.P.(Crl.)/8/2024

UTPAL CHANGMAI
S/O- SRI LOHIT CHANGMAI,
R/O- PARBATINAGAR, CHANDMARI
P.O. AND P.S.- TEZPUR,
DIST- SONITPUR, ASSAM,
PIN- 784001.

VERSUS

THE STATE OF ASSAM AND 2 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
HOME AND POLITICAL DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE SUPERINTENDENT OF POLICE
SONITPUR
DIST.- SONITPUR
ASSAM

PIN- 784001.

3:THE OFFICER-IN-CHARGE
TEZPUR POLICE STATION
TEZPUR
DIST- SONITPUR

ASSAM
PIN- 784001

Advocate for the Petitioner : MR. L GOGOI

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 03.05.2024

Heard Mr.L.Gogoi, learned counsel for the petitioner and Mr. D. Nath, learned Senior Government Advocate appearing for the respondents.

2. By filing an application under Article 226 of the Constitution of India, the petitioner has prayed to issue a writ in the nature of mandamus or certiorari or any other appropriate writ, order or direction of like nature in connection with Tezpur P.S. Case No. 733/2023 under Section 386 of the IPC r/w Section 10/13 of Unlawful Activities (Prevention)Act, 1967 (in short 'UA (P) Act').

3. The case of the petitioner is that on 30.08.2023, an FIR has been lodged by one Ganesh Sahu at Babejia outpost stating that on 26.08.2023 at about 9.50 pm, two unknown persons came in front of his house and handed over a letter to his son stating that the letter was sent by FCI. After reading the letter, he came to know that in the name of ULFA demanded cash of Rs. 10 Lakhs which was signed by one Rubel Asom. Thereafter, on 27.08.2023 and 28.08.2023, the petitioner received phone calls from mobile no. of 94852-68258 and threatened him to pay the said demanded amount and not to take shelter under the law. Accordingly, a case was registered vide Tezpur PS Case No. 733/2023.

4. It is submitted by the learned counsel for the petitioner that the petitioner is innocent and no way connected with the alleged offence. The petitioner is a national level Mixed Martial Arts Player (MMA Fighter). He has represented in kick boxing 14 times, thigh boxing 6 times and won gold medal in such championships.

5. It is further submitted that the petitioner has filed the instant writ petition (criminal) in view of the bar contained in Section 43-D (4) of the UA(P) Act granting pre-arrest bail to any person accused of any offence under the said Act and as such urgent relief has been sought as per the mandate of the Hon'ble Supreme Court.

6. In support of his submission, the learned counsel has relied on the following case laws:-

a) Arnab Monoranjan Goswami –vs- State of Maharashtra & Ors, reported in (2021) 2 SCC 427.

b) Dr.Subhash Kashinath Mahajan –vs- State of Maharashtra & anr, reported in (2018) 6 SCC 454.

c) Hema Mishra –vs- State of U.P. & Ors. reported in (2014) 4 SCC 453.

7. On the other hand, Mr. D. Nath, Senior Government Advocate has produced the case diary and submits that there are sufficient incriminating materials in the case diary against the petitioner. The investigation is going on. Learned counsel has vehemently opposed in granting any kind of protection to the petitioner.

8. I have considered the submission of learned counsel for the parties and perused the case diary.

9. When the provision of UA(P) Act defines what are prohibited and circumstances when the provision could be invoked, majority of the ingredients would be on facts. It is not necessary to locate only the active part of the crime or offender, the passive participation also has to be reckoned.

10. The allegation against the petitioner is that the informant has received a letter demanding Rs.10 Lakhs in the name of banned organization ULFA. According to learned counsel for the petitioner, as per FIR, nothing has been mentioned against the petitioner involving his role in the alleged offence. As the petitioner is a national level player, he is to go outside State. It is under these circumstances, the petitioner claims that there are no alternative means for him to urge for remedy.

11. The claim of the petitioner is that there is no documentary evidence to hold that the petitioner is associated with the banned organization ULFA and it is also ascertained that the petitioner is always busy with his profession as MMA fighter.

12. Thus, it is clear by now that this court in the writ jurisdiction has given its definite and precise finding that the investigation is under progress. In the circumstances, it is to be observed that in this criminal writ petition seeks for issue of a writ of mandamus or any other writ can be taken into consideration. It is well known process that appreciation of evidence

varies from stage to stage of a criminal case such as cognizance, adjudication of bail application etc. But adjudication under Article 226 or the final judgment certain set of events are to be taken into consideration. The petitioner cannot claim that his prayer has to be considered irrespective of maintainability of the process. Though it is not reflected in the FIR the name of the petitioner but the subsequent discovery of fresh materials and circumstances reveal the commission of offences under the provisions of UA(P) Act. The attendant circumstances and available materials are to be considered as reflected in the case diary.

13. The terrorist or disruptive activities have its activating centre in the mind of a person who converts himself a terrorist irrespective of his or her linguistic or original background. The hidden agenda or any terrorist group would come to know after the happening of an incident.

14. It is not only on the basis of recovery of material, offence is identified , on the other hand, the true content of any document or material is to be discovered rather than read. This court does not seek to pass a judgment over the nature and object of ULFA. On the other hand, stretching of the crime of demanding of Rs.10 Lakhs from the informant may be required to be examined, whether it has its visible or invisible tentacles to various institution or communities or the society. The investigation was ordered on the basis of registering a case on certain revelations, circumstances and also with reference to the fact of demanding of money in the name of ULFA.

15. No doubt, the present petitioner is invoking writ jurisdiction under the Constitution of India and inherent power of this court, regard being had to the fact that the stand of the petitioner whether right or wrong can be adjudicated during trial. At this stage, on perusal of case diary it appears that the case is at the nascent stage of investigation. Though it is reflected from the submission of learned counsel for the petitioner that the petitioner is a national level MMA fighter, however, on perusal of case diary, it cannot be said that the petitioner is entitled for any protection at this stage of investigation.

Hence, the writ petition (criminal) is dismissed and accordingly disposed of.

JUDGE

Comparing Assistant