

GAHC010082012024



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

Case No. : WP(C)/2283/2024

AHIA MOLLAH
S/O NUR ZAMAN, R/O VILL- KODOMANI PATHAR, P.O.-KODOMONI, P.S.-
BATADRAVA, DIST- NAGAON, ASSAM, PIN-782122

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER SECRETARY TO THE
GOVERNMENT OF ASSAM, HOME DEPARTMENT, DISPUR, GUWAHATI-
781006, ASSAM

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
B K KAKOTI ROAD
ULUBARI
GUWAHATI
ASSAM
PIN-781007

3:THE DISTRICT COMMISSIONER
NAGAON
DIST-NAGAON
ASSAM
PIN-782001

4:THE SUPERITENDENT OF POLICE
NAGAON
DIST-NAGAON
ASSAM
PIN-782001

5:THE OFFICER-IN-CHARGE

BATADRAVA POLICE STATION
DIST- NAGAON
ASSAM
PIN-78210

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 01.05.2024

(M.R. Pathak, J)

Heard Mr. A.I. Uddin, learned counsel for the petitioner and Mr. P. Sarma, learned Additional Senior Government Advocate for the official respondent Nos. 1 to 5.

2. On 21.05.2022, 200 (Two Hundred) violent people armed with deadly weapons, lathis, inflammable materials etc., forming an unlawful assembly trespassed into the Batadrava Police Station with criminal intention after a well thought-out criminal conspiracy. The mob along with the dead body of one Safikul Islam, son of Late Hamid Ali, village Salnabari under Dhing Police Station District Nagaon, entered into the Batadrava Police Station and attacked the police personnel therein with intention to kill them and the said mob set the Batadrava Police Station building on fire, burned the police vehicles, destroyed and caused immense damage to the public properties including arms and ammunitions, Government Registers and records including general diaries, khatian, village crime note books, case diaries, seized properties in the Malkhana with cash and documents during which some of the police personnel sustained grievous injuries

as the said group of violent people assaulted them.

3. With regard to the said incident, ASI of the Batadrava Police Station on 21.05.2022 lodged an FIR which was registered as Batadrava Police Station Case No. 54/2022 corresponding to G.R. No. 1459/2022 (PRC No. 2537/2022) under Sections

120(B)/121/143/144/145/147/149/152/153/155/326/307/333/342/353/427/436/440/447/450/34/511 of the Indian Penal Code, 1860 read with Section 3/4 of the Prevention of Damage to Public Property Act, 1984.

4. After completion of the investigation, charge sheet in the said Batadrava Police Station Case No. 54/2022 was filed on 12.08.2022 vide Charge Sheet No. 49/2022. During investigation, police apprehended some of the accused persons of the case and few evaded arrest. The said charge sheet pertaining to Batadrava Police Station Case No. 54/2022 contains the names of 22 (Twenty Two) accused persons including one Musabbir Mulla @ Khannam, son of Nur Sahab of village - Kadamonigaon, Police Station - Batadrava of Nagaon district who evaded arrest and absconded during investigation, against whom proclamation was executed on 11.08.2022.

5. The petitioner is one Ahia Mullah, son of Nur Zaman, resident of village - Kodomoni Pathar under Batadrava Police Station of district Nagaon. It is stated that the petitioner though nowhere connected with the said Batadrava Police Station Case No. 54/2022 and also was not a charge sheeted accused person in the said case, but police considering him to be the charge sheeted accused person Musabbir Mulla @ Khannam, son of Nur Sahab of village - Kadamonigaon, Police Station - Batadrava of Nagaon district and absconder accused in the said Batadrava Police Station Case No. 54/2022, tried to apprehend him. As such, he earlier in October, 2022 filed the Bail Application No. 1027/2022 under Section 438 of the

Code of Criminal Procedure, 1973 (CrPC for short), seeking bail in the said Batadrava Police Station Case No. 54/2022 stating that he is not said Musabbir Mulla @ Khannam, son of Nur Sahab and he is Ahia Mullah, son of Nur Zaman and not connected with the said Batadrava Police Station Case No. 54/2022. After obtaining the report from the Officer-In-Charge of Batadrava Police Station, the learned Additional Sessions Judge No. 3, Nagaon on 21.10.2020 rejected the said bail application of the petitioner.

6. Thereafter, the petitioner, sometime in January, 2024 also filed another bail application under Section 438 of the CrPC being Bail Application No. 2042/2023, seeking bail in the said Batadrava Police Station Case No. 54/2022. The learned Additional Sessions Judge No. 2, Nagaon called for a report from the Officer-In-charge of the Batadrava Police Station pertaining to the petitioner. On perusal of the report of the Officer-In-Charge of the Batadrava Police Station, by its order dated 30.01.2024, the learned Additional Sessions Judge No. 2 again rejected the bail application of the petitioner.

7. Hence, this writ petition by the petitioner Ahia Mullah, praying amongst others, for a direction to the respondents, more particularly, the District Commissioner, Nagaon or any other appropriate authority to cause an independent inquiry to find out the actual and proper identity of the absconder accused Musabbir Mullah @ Khannam, as wanted in connection with the said PRC Case No. 2537/2022 arising out of Batadrava Police Station Case No. 54/2022, with an interim prayer not to harass the petitioner.

8. From the orders dated 21.10.2022 and 30.01.2024 passed by the learned Additional Sessions Judge No. 3, Nagaon and Additional Sessions Judge No. 2, Nagaon respectively, by which the bail applications of the petitioner were rejected, we have seen that the learned Additional Sessions Judge No. 2 called for specific

report from the Officer-In-Charge of Batadrava Police Station pertaining to the petitioner Ahia Mullah, son of Nur Zaman *vis-à-vis* the charge sheeted absconder accused Musabbir Mulla @ Khannam, son of Nur Sahab and the Officer-In-Charge of Batadrava Police Station submitted a detailed report before the learned Additional Sessions Judge No. 2, Nagaon specifying that the said Ahia Mullah, son of Nur Zaman of village - Kodomoni Pathar, Post Office Kodomoni, Police Station - Batadrava of Nagaon district and Musabbir Mulla @ Khannam, son of Nur Sahab of village - Kadamonigaon, Police Station - Batadrava of Nagaon district is same and one person and based on such report of the Officer-In-Charge of the Batadrava Police Station, the learned Additional Sessions Judge No. 3 as well as the learned Additional Sessions Judge No. 2, Nagaon on both the occasions rejected the bail prayer of the petitioner in the said Batadrava Police Station Case No. 54/2022.

9. In one hand, the petitioner is claiming that he is Ahia Mullah, son of Nur Zaman of village - Kodomoni Pathar, Post Office - Kodomoni, Police Station - Batadrava of Nagaon district and not the absconder accused of the Batadrava Police Station Case No. 54/2022 Musabbir Mulla @ Khannam, son of Nur Sahab of village – Kadamonigaon, Police Station Batadrava of Nagaon district, whereas the police after the investigation clarified that the petitioner Ahia Mullah, son of Nur Zaman of village - Kodomoni Pathar, Post Office – Kodomoni, Police Station - Batadrava of Nagaon district is the same person with that of the charge sheeted absconder accused namely, Musabbir Mulla @ Khannam, son of Nur Sahab of village - Kadamonigaon, Police Station -Batadrava of Nagaon district.

10. Though the petitioner has prayed for a direction to the concerned authority for proper identification of the charge sheeted absconder namely, Musabbir Mulla @ Khannam, son of Nur Sahab of village - Kadamonigaon, Police Station - Batadrava of Nagaon district, because of such disputes raised by the police clarifying that the petitioner Ahia Mullah, son of Nur Zaman of village - Kodomoni

Pathar, Post Office – Kodomoni, Police Station - Batadrava of Nagaon district and the absconder accused of the said Batadrava Police Station Case No. 54/2022 Musabbir Mulla @ Khannam son of Nur Sahab of village - Kadamonigaon Police Station - Batadrava of Nagaon district is same and one person, the prayer made by the petitioner in this writ petition cannot be entertained. The petitioner has alternative remedy under the Code of Criminal Procedure to approach the appropriate forum in that regard.

11. Considering such disputed facts, the prayer made by the petitioner in this writ petition cannot be entertained, and accordingly this writ petition stands rejected.

12. In the above terms this writ petition stands dismissed.

JUDGE

JUDGE

Comparing Assistant