

GAHC010152342024



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

Case No. : Bail Appln./2256/2024

SRI BEDANGA KUAMR KASHYAP
S/O LATE MUNINDRA NATH SHARMA,
RESIDENT OF PANKA VILLAGE, GOLAGHAT, ASSAM 785699 PS
NUMALIGARH NRL OUTPOST CK77 CHANDRAKAUSH NRL TOWNSHIP

VERSUS

THE STATE OF ASSAM
REP BY THE DIVISIONAL FOREST OFFICER, GOLAGHAT(T)DIVISION

Advocate for the Petitioner : MS. D KALITA, MR D K DAS,MR. M KHATANAR,MR. R K AGARWALA,MR. A K BHATTACHARYYA

Advocate for the Respondent : SC, FOREST,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

21.08.2024

1. Heard Mr. A. K. Bhattacharya, learned Sr. counsel assisted by Mr. D. K. Das, learned counsel appearing for the accused petitioner as well as Mr. D. Gogoi, learned standing counsel, Wildlife.
2. By filing this petition under Section 483 BNSS, 2023 the accused-petitioner, namely, **Bedanga Kumar Kashyap**, has prayed for grant of bail in connection with **Offence Report No. G/WL/02 of 2024-25 dated 20.07.2024 u/s 51 of**

Wild Life Protection Act, 1972 read with the Wild Life (Protection)(Assam Amendment) Act, 2009.

3. The factual matrix leading to this bail application is that in Golaghat District, a female elephant was found dead inside the butterfly park within NRL Township. It is alleged in the preliminary offence report that the NRL officers came to know about the incident at about 8.20 am on 18.07.2024. But the fact was reported to Golaghat DFO at about 5 pm on the same day. On visiting the spot on receipt of the information, it was noticed that the elephant was buried in a freshly dugged pit without taking any permission from the forest department. From preliminary investigation, it was found that the elephant got electrocuted from an exposed armoured cable.

4. It was urged by the learned Senior counsel for the petitioner that the petitioner is the Chief Manager of NRL and he was directed by the DFO, Golaghat Division vide notice dated 22.07.2024 issued under Section 50(8) of the Wildlife Protection Act (hereinafter referred to as 'the Act') to appear before him for recording his evidence and to produce any necessary documents in connection with the alleged incident but on his appearance before the DFO, Golaghat he was arrested which is totally illegal. It is also pointed out that a bare perusal of the said Section would show that under no circumstances the officer issuing the notice under Section 50(8) of the Act is empowered to arrest and detain anyone. Under such circumstances, the arrest and detention of the petitioner is prima facie without any jurisdiction and any authority of law and as such the petitioner is liable to set at liberty.

5. It is further submitted that the petitioner has been languishing in judicial custody for last 29 days without committing any such offence. It is also contended that in the present case the preliminary offence report was lodged by Forester-1

who is admittedly not a gazetted officer. As such the preliminary offence report is in total contravention of Section 55 of the Act and the learned CJM, Golaghat ought not to have taken cognizance of the same as such the detention of the petitioner in relation to the said preliminary offence report is illegal.

6. It is also the submission of learned counsel for the petitioner that the petitioner being the Chief Manager of NRL on 18.07.2024 at around 8 am, he got the information from his staff that there was a dead elephant in the butterfly park within the NRL Township. Thereafter, he immediately rushed to the spot and found that a herd of wild elephants were also there in the vicinity. The petitioner attempted to inform the Forest officials but was unable to do so due to network connectivity issues in that area. Fearing that the herd of wild elephant might become violent upon seeing the dead elephant, the petitioner thought that it would be proper to preserve the carcass in a safe place in a pit to keep it intact. Thus there was a delay of few hours in reporting the matter to the forest department. The petitioner, thereafter, with the help of some NRL staff put the dead elephant to the pit.

7. According to learned counsel for the petitioner, as there was violation of several provisions of the Act, considering the background of the case as well as length of detention, the petitioner may be enlarged on bail.

8. Mr. D. Gogoi, learned standing counsel, Wildlife, has submitted that the case is under investigation. Both the arrested accused petitioners admitted that they did not inform the death of the female elephant to the forest department in time and without their permission they put the carcass of the elephant in the pit. It is further submitted that the Indian elephant is a protected species under Schedule 1 of the Act and the act of injuring or attempt to injure and driving away by teasing of the protected species attracts the provision of Wildlife Act which is punishable under

Section 51 of the Act.

9. It is further submitted that though two accused persons were arrested in connection with the case but one of the accused person namely, Muzammil Hussain is still absconding. Grant of bail may be demeritorious to the ongoing investigation as they may influence the witnesses and tamper the evidence. Hence, learned standing counsel, Wildlife prays for dismissal of the bail application.

In support of his submission, the learned standing counsel has placed reliance on the following case laws:

- (1) *State represented by the CBI vs Anil Sharma (AIR 1997 SC 3806).*
- (2) *BA 3226/2021 (Sankar Sutradhar and Anr. Vs State of Assam).*
- (3) *BA 354/2023 (Dharmendra Patgiri vs State of Assam).*
- (4) *State and others vs Amar Mani Tripathi and Ors reported in (2005) 3 ACR 2995 SC.*

10. Having heard the learned counsel for both the parties and on perusal of the offence report, the admitted position is that a female elephant was found dead inside the Butterfly Park, NRL Township. Though the accused/petitioners who are officers of the NRL came to know about the death of the elephant inside the township in the morning around 8.30 am but they informed the forest department in the evening time at about 5.30 pm. The cause shown by the petitioners regarding delay of information due to network connectivity issues cannot be considered to be acceptable one. The NRL has enough staff and there might not be any hindrance to inform the matter to the concerned forest department by sending a messenger also. As per offence report, the arrested accused/petitioners instructed some persons to hide the carcass by digging a pit and putting salt for faster decomposition with the malafide intention to destroy the evidence. The hunting of Asiatic elephant, keeping the carcass of schedule 1 wild animal is an

offence punishable under Section 51 of the Act.

11. The post mortem report of the elephant is also available in the offence report from which it reveals that the veterinary doctor who examined the carcass of the dead elephant, opined that the animal might have died due to cardiac respiratory failure owing to the possibility of electrocution. The report further shows a column observation of the surroundings, which reflects a switch board of loop of electric wires, exposed and broken.

12. Regarding violation of Section 50(8) of the Act which empowers the Assistant Director of Wildlife Preservation or the Wildlife warden to investigate an offence under the Act, cannot be read to oust the powers conferred under Section 50(1) of the Act. Thus, the scheme of the Act, in my opinion, appears to confer jurisdiction on the Director of Wildlife Preservation, Wildlife Warden or a police officer not below the rank of sub inspector, to enter or search and/or arrest and detain any individual suspected of having committed an offence under the Act.

13. In view of the above, under the facts and circumstances of the case and considering the gravity of the offence, this Court is not inclined to grant bail to the petitioner. However, the respondent/State is directed to complete the investigation at the earliest.

14. Accordingly, the bail application stands rejected.

15. This bail application stands disposed of.

JUDGE

Comparing Assistant