

GAHC010173802024



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

Case No. : Bail Appln./2568/2024

NAOROIBAM NAOBA MEITEI AND ANR
S/O SHRI JOY MEITEI, A P/R/O PATLOU VILLAGE, P.S.-SAGOLMANG,
IMPHAL EAST DISTRICT, MANIPUR

2: MD. WARISH
S/O MD. IBOMCHA
A R/O THANGJAM KHUNOU VILLAGE
P.S.-SAGOLMANG
IMPHAL EAST DISTRICT
MANIPU

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. N J SINGH, MRS P HAZARIKA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 20.09.2024

Heard Mr. N.J. Singh, learned Senior Counsel, assisted by Ms. P. Hazarika,
learned counsel for the accused and Mr. B. Sarma, learned Special Public

Prosecutor, Wildlife for the State respondent.

2. This petition, under Section 483 of BNSS, 2023 is preferred by two accused, namely, Nooba Meitei and Md. Warish, who have been languishing in jail hazot since 05.03.2023, in connection with Special Wildlife Case No.02/2023, arising out of Office Report No.CR/08 of 2022-23, dated 05.03.2023, under Sections 44, 48(A), 49, 49(B) and 51 of the Wildlife (Protection) Act, 1972, for grant of bail.

3. Notably, Special Wildlife Case No.02/2023 has been registered on the basis of one complaint lodged by the Assistant Conservator of Forests, Central Range, Manja, Karbi Anglong.

4. The essence of allegation, in the complaint aforesaid is that on 05.03.2023, at about 1:30 p.m. the accused persons were carrying two numbers of juvenile primate species, illegally in a TATA 1512 Truck, bearing Registration No.AS-01PC-2917. And they were apprehended by ASI Jiten Gogoi, I/C of Lahorijan Police Patrol Post.

5. Mr. Singh, learned Senior counsel for the accused submits that the accused persons were arrested on 05.03.2023, and since then they have been languishing in jail hazot for last 1½ years. Mr. Singh also submits that the animals allegedly recovered and seized from the possession of the accused are not Schedule animals and as such, Section 51 of the Wildlife (Protection) Act, 1972 is not attracted here in this case. Besides, Mr. Singh further submits that on account of their incarceration, the accused persons could not engage counsel of their choice as they hail from Manipur where ethnic clash is going on, and that the accused are ready to face trial and will appear before the Court on each and every date. Mr. Singh referring to some recent decisions of Hon'ble Supreme Court in the cases of **Jalaluddin Khan vs. Union of India**, in **Criminal**

Appeal No. 3173 of 2024 and Manish Sisodia vs. Directorate of Enforcement, in Criminal Appeal No. __ of 2024 [arising out of SLP (Criminal) No. 8772 of 2024], wherein it has been held that the right to speedy trial is a fundamental right and that right to liberty is a sacrosanct right and the same cannot be denied to the accused at the stage of pre-trial, and that bail is the rule and jail is an exception. Mr. Singh further submits that since the accused herein are languishing in jail hazoot since long and the trial also could not be completed in time, their right stands violated and on such count Mr. Singh has contended to allow this petition.

6. On the other hand, Mr. B. Sarma, learned Special Public Prosecutor, Wildlife submits that the earlier bail application, being 765 of 2024, preferred by the accused persons, was rejected by this Court, vide order dated 20.05.2024, and now no change of circumstances has been shown in their favour and as such this petition is not maintainable. Mr. Sarma also submits that total eight witnesses have been cited in the charge-sheet, out of which seven witnesses have already been examined, and that the trial is at the last stage and if the accused are enlarged on bail at this stage, it will cause further delay in disposal of the case and as such, Mr. Sarma has vehemently opposed the petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record as well as status report received from the learned trial Court.

8. It is not in dispute that the accused were arrested on 05.03.2023, and since then they have been languishing in jail hazot for last 1½ years. It appears that after dismissal of bail application No. 765 of 2024, preferred by the accused

persons, vide order dated 20.05.2024, no fresh ground and change of circumstances has been shown in favour of the accused persons. Further it appears from the Status Report of the case received from the learned trial court that the trial has progressed significantly and it is in the last stage. Out of eight cited witnesses, seven have already been examined and next date has been fixed on 25.09.2024 for examination of the Seizing Officer. That being so, there appears to be substance in the submission of Mr. Sarma, learned Special Public Prosecutor, Wildlife that the trial is at the fag end and enlarging the accused persons on bail at this stage, will cause delay in disposal of the case.

9. I have also carefully gone through the decisions of Hon'ble Supreme Court in the cases of **Jalaluddin Khan** (supra) and **Manish Sisodia** (supra), referred by Mr. Singh, learned Senior Counsel for the accused.

10. There is no quarrel at the bar about the proposition of law laid down in the aforementioned cases. But, having gone through the record of the learned trial court, this Court is unable to agree with the submission of Mr. Singh, learned Senior Counsel for the accused that right to speedy trial of the accused is violated here in this case. Having regards to the progress and stage of trial, this Court is of the view that trial will be completed very soon. I have also considered the submission of Mr. Singh, in respect of the recovered and seized animals being not scheduled animal Section 51 of the Wildlife Act is not attracted. But, the accused have already been charged on that count and having not challenged the order of framing charge against the accused persons before any forum, this court, in dealing with a bail application cannot examined the same, while the entire materials are also not before this court. As the trial is about to complete, liberty is granted to the accused persons to raise the issue before the learned trial court at the stage of argument.

11. In the given facts and circumstances, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused persons. Accordingly, this bail application stands dismissed.

JUDGE

Comparing Assistant