

GAHC010176042024



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

Case No. : Bail Appln./2597/2024

BINI TANGUM
R/O RIGYU, P.S.-KALAPTUKAR, DIST-LOWER SUBANSIRI, ARUNACHAL
PRADESH-791120

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. P BORA, MS K SARMA

Advocate for the Respondent : PP, ASSAM, MR. I BORTHAKUR, SPECIAL P.P, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

05-11-2024

Heard Mr. P. Bora, learned Senior Counsel assisted by Ms. K. Sarma, learned counsel for the petitioner and Mr. I. Borthakur, learned counsel appearing on behalf of Mr. D. Gogoi, learned Special Public Prosecutor, Forest Department, Assam for the respondent State.

2. The petitioner, namely, **Sri Bini Tangum**, resident of Rigyu, P.S.-Kalaptukur, District-Lower Subansiri, Arunachal Pradesh has filed this application under Section 483 BNSS, 2023 seeking bail in **Preliminary Offence Report No. D/02/2024 dated 23.01.2024** registered under Section 9, 39, 40, 42, 50 and 51 of the Wildlife Protection Act, 1972, that was registered by the Forester-I, Investigating Officer, Dhemaaji Range, Dhemaaji, wherein, he was arrested on 24.01.2024 and is in custody since then.

3. According to the petitioner, he is no way connected with the case and he has been falsely implicated in the case.

4. According to the petitioner he on 23.01.2024 had gone to the forest to collect some cane, but to his utter surprise around 10:30/11:00 AM a team of forest staff of Range Head Quarter, Dhemaaji Range, Dhemaaji along with police personnel Gogamukh Police Patrol Post and personnel of Wildlife Crime Control Bureau (WCCB) gather around him, started questioning him pertaining to two ivory tusks of a Asiatic Elephant about which he was not at all aware. Thereafter, those personnel took him from the jungle with them to their office. Subsequently, the Forester-I, Investigating Officer, Range Head Quarter, Dhemaaji Range, Dhemaaji Division filed the Preliminary Offence Report before the Court of learned Chief Judicial Magistrate, Dhemaaji being Offence Report No. D/02 of 2024 dated 23.01.2024 against him alleging that as per

intelligence input a search was conducted with regard to the trading of ivory tusks of an Asiatic Elephant. Thereafter, the petitioner was apprehended red handed with two suspected ivory tusks of an Asiatic Elephant at Dirpai near Gupta Bridge around 11:00 AM.

5. The petitioner stated that in the said Preliminary Offence Report dated 23.01.2024 it was further alleged that when he was asked by the Forest personnel as to whether, he has any documents to prove to which the petitioner answered negatively, he was brought to the Range Head Quarter, Dhemaaji Range, Dhemaaji Division for interrogation and the said Investigating Officer alleged that the petitioner is involved in the act of hunting and trading or attempt to hunting and trading of the protected species that attracts the provisions of Sections 9, 39, 40, 42, 50 and 51 of the Wildlife Protection Act, 1972 read with the Wildlife (Protection) (Assam Amendment) Act, 2009 and accordingly, an offence was registered under Dhemaaji Range by the said Offence Report No. D/02 of 2024 dated 23.01.2024.

6. Mr. Bora, learned Senior Counsel for the petitioner submitted that the concerned Investigating Officer of the case without being empowered under the said 1972 and 2009 Acts and without having any authority submitted the said Offence Report No. D/02 of 2024 dated 23.01.2024 against the petitioner and for that reason he is entitled to be released for the alleged offence registered against him in said Offence Report dated 23.01.2024.

7. Mr. Bora, learned Senior Counsel also placed that the petitioner was first placed before the learned CJM, Dhemaaji in the complaint case being CR No. 19/2024 who sent him to judicial custody for the time being indicating that he is to be tried and prosecuted for the offences that he had not committed at all.

8. It is also submitted that the petitioner was produced before the learned CJM, Dhemaaji on 24.01.2024 and on perusing the said Preliminary Offence Report No. D/02 of 2024 dated 23.01.2024 the said authority by order dated 24.01.2024 sent him to

judicial custody. Later when he was produced on 08.02.2024 and 13.03.2024 bail applications on his behalf was moved which the learned CJM, Dhemaji mechanically rejected sending him for further judicial custody.

9. It is stated that after completion of the investigation of the case, the concerned Investigating Officer on 16.03.2024 submitted its offence report before the learned CJM, Dhemaji against the petitioner under Sections 9, 39, 40, 42, 50 and 51 of the Wildlife Protection Act, 1972 read with Section 51 (B) of the Wildlife (Protection) (Assam Amendment) Act, 2009 and the said authority on 16.03.2024 itself committed the case to the learned Sessions Judge, Dhemaji stating that the said case is exclusively triable by the learned Sessions Judge remanding back the petitioner to judicial custody.

10. Mr. Bora, learned Senior Counsel further submitted that the petitioner was produced before the learned Sessions Judge, Dhemaji on 30.03.2024 and 12.04.2024 and bail applications on his behalf was moved that were rejected by the learned Sessions Judge without considering the facts and circumstances of the case.

11. Since, the offence report has already been submitted against the petitioner, the petitioner for no reason has been kept in custody since 24.01.2024 till date.

12. Perused the case records of Sessions (Wildlife) Case No. 23/2024 of the Court of learned Sessions Judge, Dhemaji arising out of said Offence Report No. D/02 of 2024 dated 23.01.2024 corresponding to CR Case No. 19/2024.

13. Mr. Borthakur, learned counsel for the State respondents on instructions submitted that the Forester-I, of a Range Head Quarter under the Forest Division of Assam is empowered to be an Investigating Officer under the Wildlife Protection Act, 1972 as well as the Wildlife (Protection) (Assam Amendment) Act, 2009 who is also empowered to submit Preliminary Offence Report as well as Offence Report relating to a case under Wildlife Acts. Mr. Borthakur in that regard submitted that as per the Notification dated 05.03.1988 of the Forest Department notified in the Assam Gazette

Extraordinary on 05.03.1988 itself any Forest Officer, not below the rank of Forester to make complaint under the Wildlife Protection Act, 1972.

14. Mr. Borthakur from the case record placed that during search operation two ivory tusks of elephant have been recovered from the possession of the petitioner one weighing about 1.955 Kgs of 52 cm length with girth of 20 cm and another weighing about 1.980 Kgs of 54 cm length with girth of 20 cm and that FSL report dated 08.02.2024 indicated that those two ivory tusks are real ivories.

15. Mr. Borthakur on behalf of the State also submitted that the petitioner in his confessional statement recorded by the Assistant Conservator of Forest of Lakhimpur Divisional Forest, North Lakhimpur stated that he is involved in hunting and trading of Asiatic Elephant (*Elephas Maximus*).

16. From the case records it is noticed that learned Sessions Judge, Dhemaji on 12.04.2024 framed charge under Section 51 of the Wildlife Protection Act against the petitioner and issued summons to the five named prosecution witnesses.

17. The record of said Sessions (Wildlife) Case No. 23/2024 further reveals that from 10.06.2024 to 27.08.2024 the Court of learned Sessions Judge, Dhemaji have already recorded evidence of four named prosecution witnesses including that of the concerned Investigating Officer, who submitted the Preliminary Offence Report as well as the Offence Report who were thoroughly cross examined by the defence.

18. It is seen that said Sessions (Wildlife) Case No. 23/2024 is fixed again on 20.12.2024 for evidence.

19. It is to be noted herein that vide Notification No. 19.10.2010 published in the Assam Gazette Extraordinary on 20.10.2010 Section 51 of the Wildlife (Protection) (Assam Amendment) Act, 2009 was amended wherein punishments under Section 51 (b) has been enhanced from 3 years to 7 years, 7 years to 10 years and the fine of Rs.10,000/- has been enhanced to Rs.50,000/-.

20. Further, by the said amendment Section 51 B (3) has been inserted after Section 51 A of said 2009 Act, whereby, offences under the said 2009 Act is triable by the Court of Sessions of the respective jurisdiction.

21. Considering the above and that the petitioner is from the State of Arunachal Pradesh and further that the trial is at its last stage, the Court is of the view that enlarging the accused on bail in said Sessions (Wildlife) Case No. 23/2024 pending before the Court of learned Sessions Judge, Dhemaji will hamper the progress of the trial.

22. For the reasons above, the Court found that it is not a fit case to grant bail to the accused petitioner, **Sri Bini Tangum** in said Sessions (Wildlife) Case No. 23/2024 at this stage and accordingly, this bail application of the petitioner stands rejected.

JUDGE

Comparing Assistant