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

**Case No. : Bail Appln./3305/2024**

ABUL KALAM AZAD  
S/O LATE AMIR ALI, R/O DHAKALIAPARA, P.S.-HOWLY, DIST- BARPETA  
(ASSAM)

2: AKBAR ALI  
S/O LATE AMIR ALI  
R/O DHAKALIAPARA  
P.S.-HOWLY  
DIST- BARPETA (ASSAM)

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

**Advocate for the Petitioner** : MR H R A CHOUDHURY, MR. I U CHOWDHURY, M ALAMGEER

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**29.11.2024**

Heard Mr. A. Ahmed, learned counsel for the accused persons and Mr. M.P. Goswami, learned Additional Public Prosecutor for the State respondent.

**2.** This application, under Section 483 of the B.N.S.S., is preferred by accused namely, **Abul Kalam Azad** and **Akbar Ali**, who have been languishing in jail hazot since 27.08.2022, in connection with **Sessions Case No. 10/2023**, arising out of Barpeta P.S. Case No. 763/2022, under Sections 120(B)/121/121A of the I.P.C., read with Sections 17/18/18(B)/19/20 of the Unlawful Activities (Prevention) Act, for granting bail.

**3.** The said case has been registered on the basis of one F.I.R. lodged by one Shri Ranjan Doley, Inspector of Police, Barpeta P.S.

**4.** The gravamen of allegation against the accused are that during investigation of the Barpeta P.S. Case No. 268/2022, under Sections 120(b)/121/121A of the I.P.C., read with Sections 17/18/18(B)/19/20 of the Unlawful Activities (Prevention) Act, 1967, read with Section 12(1)(C) of the Passport Act and Section 14A(b) of the Foreigners Act and Barpeta P.S. Case No. 419/2022, under Sections 120(B)/121/121A of the I.P.C., read with Section 17/18/18(B)/19/20 of the Unlawful Activities (Prevention) Act, 1967, regarding existence of an important Jihadi (terror) outfit based in Bangladesh and operating in Barpata District, it was learnt that several modules of the proscribed Ansarullah Bangla Team (A.B.T.) having affiliation to Al-Qaeda in the Indian Sub-Continent (A.Q.I.S.) are active in Barpeta District and that members/supporters of A.B.T. were indoctrinating and motivating the people of Barpeta to join Jihadi outfits and work in modules 'Ansas' (sleeper cells) for creating a base for Al-Qaeda and its manifestations in various form of names and styles in India, all of which are declared terrorist organizations in India as per the provisions of Unlawful Activities (Prevention) Act. It was also found that these modules, comprising of one Jubair Khan, Rafiqul Islam, Dewan Hamidul Islam, Mainul Hoque, Kazibur Hussain, Muzibaur Rahman, Shahanur Alam, Sahjahan Ali and others, have hatched a

criminal conspiracy with other members of the A.B.T. along with a group of men/youths of the District for facilitating further training of indoctrinated youths/men for waging Jihad and related terrorist activities in the District. They are working towards advocating, abetting, inciting, assisting, harboring, recruiting and collecting funds for organizing and committing unlawful and terrorist activities in the name of Jihad.

**5.** Mr. Ahmed, learned counsel for the accused persons submits that the accused were arrested on 27.08.2023, and since then they have been languishing in jail hazot for more than 2 years 3 months. Mr. Ahmed further submits except the present accused persons, other co-accused have already been granted bail, either by this court or by the learned trial court. Mr. Ahmed further submits that after completion of the investigation, the I.O. has submitted charge-sheet in the case citing as many as 59 witnesses and out of 59 cited witnesses, only 19 witnesses could have been examined so far and 40 witnesses are still to be examined by the learned trial court, and if the trial is going on at the present pace, then it will take another two years to complete trial. Mr. Ahmed further submits that the Officer-In-Charge of Barpeta Police Station registered two cases, one is Barpeta P.S. Case No. 763/2022 and another is Barpeta P.S. Case No. 268/2022 and that the Barpeta P.S. Case No. 268/2022 has already been handed over to the N.I.A. and the F.I.R. of present case has been registered subsequently and the Officer In-Charge of Barpeta Police Station ought not have registered the present case, subsequently, upon the same allegation. Mr. Ahmed also submits that the accused persons are local persons and they will face the trial and appear before the learned trial court on each and every date and the allegations against them are not serious in nature and therefore, it is contended to allow the petition.

**6.** On the other hand, Mr. Goswami, learned Additional Public Prosecutor submits that the charges against the accused are serious and that I.O. has

collected sufficient incriminating materials against them. Mr. Goswami further submits that the trial is going on and out of 59 cited witnesses, 19 witnesses have already been examined and those witnesses have implicated the accused persons in respect of seizure of mobile phone and some documents from them. Mr. Goswami further submits that trial is going on and in the event of enlarging the accused persons on bail at this stage, it will be difficult to procure their attendance and thereby further delay will be caused in disposal of the case and therefore, it is contended to dismiss the petition.

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

**8.** It is not in dispute that the accused persons were arrested on 27.08.2023, and since then they have been languishing in jail *hazot* for more than 2 years 3 months. It appears that after completion of the investigation the I.O. has submitted charge-sheet citing as many as 59 witnesses and out of 59 cited witnesses, only 19 witnesses have been examined so far and still there remains to be examined 40 witnesses. It also appears that the witnesses examined so far are seizure witnesses and they have deposed about the seizure of mobile phone and some other documents from the possession of the present accused persons.

**9.** It also appears that the charges have been framed against the accused under Sections 18/19/20 of the U.A.(P) Act. That being so the accused have to satisfy the requirements of Section 43(D)(5) of the U.A.(P) Act. But, it has been held by Hon'ble Supreme Court in the case of **Union of India vs. K.A. Nazib**, reported in (2021) 3 SCC 713, that Section 43(D)(5) of the U.A.(P) Act merely provides another possible ground for competent Court to refuse bail, in addition to

the well settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses and chance of the accused evading the trial by absconding, etc. Again in the case of **National Investigating Agency vs. Zahoor Ahmed Shah Watali**, reported in (2019) 5 SCC 1, Hon'ble Supreme Court has been held that the degree of difference between the satisfactions to be recorded by the court is different and lighter from other special statute like TADA, MCOCA and NDPS Act. It was also held that the Bench cannot venture into the merits and demerits of the case while assessing bail.

**10.** In the instant case, from the evidence brought on record so far, and also having reckoned the entire materials collected against the present accused in the case diary, and also the submission of learned counsel for both the parties and without commenting on the merit of the evidence and materials, this court is of the view that *a prima-facie* case exist for granting bail to the accused.

**11.** Also it appears from the record that charge-sheet has been submitted against several accused and most of the accused have already been enlarged on bail, either by this court or by the learned trial court, and on such count, Mr. Ahmed, learned counsel for the accused submits that the present accused persons also stands in the same footing with the accused already granted bail and as such, they may also be enlarged on bail on the ground of parity.

**12.** While dealing with the issue of parity, Hon'ble Supreme Court in the case of **Satinder Kumar Antil vs. C.B.I. & Another**, reported in (2022) 10 SCC 51, held as under:-

**“98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the**

same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.”

**13.** But, it is equally well settled that parity is not the law. While the issue raised for consideration of the court and while extending the benefit of parity, the court has to see the role played by individual accused vis-à-vis the role played by the co-accused, who have already been granted bail. Herein this case having considered the role of the present accused and the role played by co-accused, who have already been granted bail, the submission of Mr. Ahmed, the learned counsel for the accused persons, cannot be said to be without any force.

**14.** It is also not in dispute charge has been framed against the accused on 20.07.2023. Till date, the prosecution side has been able to examined only 19 witnesses, out of 59 witnesses cited in the charge-sheet and there is no immediate prospect of conclusion of the trial also.

**15.** The learned counsel for the accused assured that the the accused will appear before the trial court on each day of trial and that they are local person having root in the society.

**16.** Having considered above and also considering the length of detention as well as the materials brought on by examining 19 cited witnesses, and without commenting on merit of the same, this court is of the view that a case for granting bail to the present accused persons is made out.

**17.** Accordingly, it is provided that on furnishing a bond of Rs. 1,00,000/- each only, with one surety of like amount to the satisfaction of the learned **Sessions Judge, Barpeta**, the accused persons, namely, **Abul Kalam Azad** and **Akbar Ali**,

who have been languishing in jail hazot since 27.08.2022, in connection with Sessions Case No. 10/2023, arising out of Barpeta P.S. Case No. 763/2022, under Sections 120(B)/121/121A of the I.P.C., read with Sections 17/18/18(B)/19/20 of the Unlawful Activities (Prevention) Act, shall be enlarged on bail. The learned Sessions Judge, Barpeta, also will be at liberty to impose any other condition, in addition to above, to ensure their presence during trial.

**18.** In terms of above, this bail application stands disposed of.

**JUDGE**

**Comparing Assistant**