

GAHC010228772023



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

Case No. : Bail Appln./3642/2023

ZAKIR HUSSAIN
S/O ABDUR REZZAK
R/O VILL- KAYAKUCHI PAM
P.S. BARPETA
DIST BARPETA, ASSAM
PRESENT ADDRESS-
NAJAFGARH, P.S. JAFARPUR
SOUTH WEST DELHI.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

30/04/2024

Heard Mr. S Borthakur, learned counsel for the petitioner and Mr. D Das, learned Additional Public Prosecutor, Assam for the respondent State.

2. The petitioner, namely, Zakir Hussain, son of Abdur Rezzak, resident of Village - Kayakuchi Pam, Post Office - Naligaon, Police Station - Barpeta, District - Barpeta, present address - House No. 114, Gopal Nagar, C Block, Najafgarh, Police Station - Jafarpur, District - Dwarka, South West Delhi was arrested on 15.04.2023 in connection with Barpeta Police Station Case No. 175/2023 under Sections 120B/121/121A of the Indian Penal Code read with Sections 10/13/18 of the Unlawful Activities (Prevention) Act, 1967 corresponding to G.R. Case No. 566/2023. Since his arrest on 15.04.2023, the petitioner is in custody in said Barpeta P.S. Case No. 175/2023.

3. In said Barpeta P.S. Case No. 175/2023 including the petitioner, four persons have been arrested and they are also in custody. In said Barpeta P.S. Case No. 175/2023 police on 06.07.2023 submitted charge-sheet against all the four arrested accused persons of the case including the petitioner. After filing of said charge-sheet, the learned Sessions Judge, Barpeta on 06.07.2023 directed to register the said Barpeta P.S. Case No. 175/2023 as a Sessions Case and accordingly, it has been registered as Sessions Case No. 125/2023 (*State Vs. Jahirul Islam and Others*), which is presently pending for adjudication.

4. The learned Sessions Judge, Barpeta on 13.09.2023 framed charge under Sections 10/13/18 of the UA(P) Act, 1967 against the petitioner and the three others.

5. Alleging that prosecution sanction as required under Section 45 of the UA(P) Act, 1967 was not obtained by the prosecution before filing the charge-sheet against the petitioner and other three accused persons arrested in the case, it was submitted before the learned Sessions Judge, Barpeta that cognizance taken by it in said Sessions Case No. 125/2023 was not proper. The learned Sessions Judge, Barpeta by its order dated 13.09.2023 rejected the said contention on behalf of the accused persons observing that the sanction order cannot be brought within the category of the documents contemplated under Clause (5) of Section 173 of the Code of Criminal Procedure and that the grant of sanction is all together a different act to be performed by the

Government concerned under Section 45 of the UA(P) Act.

6. Considering that after a thorough investigation, charge-sheet in the said Barpeta P.S. Case No. 175/2023 was filed against the accused persons under Sections 10/13/18 of the UA(P) Act, 1967 and on finding prima-facie materials against the accused persons to proceed against them, the learned Sessions Judge, Barpeta on 13.09.2023 in said Sessions Case No. 125/2023 framed written charge under Sections 10/13/18 of the UA(P) Act, 1967 against the accused persons including the petitioner, that were read over and explained to them to which they pleaded not guilty. The said Sessions Case No. 125/2023 has already been fixed for evidence of the prosecution, wherein summons to the prosecution witnesses have also been issued.

7. In the meanwhile, the petitioner was hospitalized at Fakharuddin Ali Ahmed Medical College & Hospital at Barpeta for surgery of his Gallbladder.

8. The petitioner subsequently filed a Criminal Petition under Section 482 of the Code of Criminal Procedure being Criminal Petition No. 1108/2023 for quashing of the proceedings of said Sessions Case No. 125/2023 arising out of Barpeta Police Station Case No. 175/2023 under Sections 120(B)/121/121-A of IPC that is pending before the Court of learned Sessions Judge, Barpeta as well as the order dated 13.09.2023, whereby the cognizance against the present petitioner/accused along with the other accused persons of the case under Sections 10/13/18 of the UA(P) Act, 1967 was taken, stating that without there being any prosecution sanction as mandated under Section 45 of the UA(P) Act, 1967, the learned Sessions Judge, Barpeta illegally took cognizance of the offences under Part-II of said 1967 Act, in spite of bringing the said fact to the notice of the Trial Court and that the said Court, without dealing with the said issue at first, took cognizance of the offences under Sections 10/13/18 of the UA(P) Act, 1967 against him and other accused persons of the case.

9. Though the Government Advocate of Assam during the course of hearing of said Criminal Petition No. 1108/2023 placed the requisite copy of order of sanction under Section 45(2) of the UA(P) Act, 1967 dated 13.10.2023 issued by the Secretary to the Government of Assam, Home & Political Department; the Court found that the said sanction order granted on 13.10.2023 was not available before the Trial Court being not issued at the time of taking cognizance in the case on 13.09.2023.

10. The Court on 17.10.2023 in said Criminal Petition No. 1108/2023 while issuing notice to the respondents, in the interim, till the returnable date, suspended the further proceeding of said Sessions Case No. 125/2023 pending before the Court of learned Sessions Judge, Barpeta and also suspended the order dated 13.09.2023 passed in the said Sessions Case so far relating to the petitioner whereby cognizance under Sections 10/13/18 of the UA(P) Act, 1967 was taken against him.

11. Mr. Borthakur, learned counsel for the petitioner submitted that the said interim order dated 17.10.2023 passed in said Criminal Petition No. 1108/2023 is in force, which has also been admitted by Mr. Das, learned Additional Public Prosecutor.

12. The petitioner has filed this bail application under Section 439 CrPC to release him on bail in said Sessions Case No. 125/2023 pending before the learned Sessions Judge, Barpeta stating that as investigation of the case is already complete and charge-sheet in the case has already been submitted that clearly reflects that he is no way connected with the said case. It is also stated that as he is in custody since his arrest on 15.04.2023, his further custody in said case is no longer required.

13. It is also stated by the petitioner that he was neither a member of the Popular Front of India (PFI) or Campus Front of India (CFI), banned organizations at any point of time nor a member of any of those organisations and is working in a private company situated at Delhi maintaining his family honestly. He also stated that he is not at all connected with any extremist or terrorist or antisocial activities and any banned organizations at any point of time.

14. Petitioner stated that as one of the FIR named arrested accused person of the case, namely, Jahidul Islam is his brother-in-law and since said Jahidul Islam with another FIR named arrested accused person stayed in his house at Delhi, police arrested him in the case merely on suspicion, though he fully cooperated with police during investigation of the case. He submitted that he is ready to comply with the conditions that may be imposed upon him if released on bail.

15. Petitioner earlier preferred a regular bail application in said Sessions Case No. 125/2023 before the learned Sessions Judge, Barpeta but it was rejected. Further, prior to filing of the charge-sheet in the case on 06.07.2023, the petitioner earlier preferred a bail application in Barpeta P.S. Case No. 175/2023 being B.A. No. 1708/2023 and this Court on perusal of the case

diary by order dated 26.06.2023 rejected said bail application of the petitioner.

16. Placing reliance on the decision of the Hon'ble Supreme Court in the case of *Sanjay Chandra -Vs- CBI* reported in (2012) 1 SCC 40, Mr. Borthakur, learned counsel for the petitioner submitted that "*gravity of offence alone cannot be a decisive ground to deny bail*" and also submitted that protection of personal liberty that is paramount consideration must be respected unless detention becomes necessary. He further stated that the petitioner unnecessarily need not be kept in jail, who is yet to be proved guilty.

17. Mr. Borthakur, learned counsel placing the decisions of the Hon'ble Supreme Court in the cases of *Vernon -Vs- The State of Maharashtra and Another*, reported in (2023) SCC OnLine SC 885 = AIR 2023 SC 3926 and *Shoma Kanti Sen -Vs- The State of Maharashtra and Another*, decided on 05.04.2024 (Criminal Appeal No. 2595/2023) submitted that the petitioner is entitled for bail in said Sessions Case No. 125/2023 pending before the learned Sessions Judge, Barpeta arising out of Barpeta P.S. Case No. 175/2023 corresponding to G.R. Case No. 566/2023.

18. Placing the charge-sheet of the case, Mr. Borthakur submitted that though during investigation one of the FIR named arrested accused person namely, Jakir Hussain, son of Haider Ali told police that the other FIR named arrested accused person Jahidul Islam told him that said Jahidul Islam collected the money amounting to Rs. 1.5 lacks for the banned organization from his brother-in-law Zakir Hussain, i.e., the present petitioner. Mr. Borthakur, learned counsel submitted that such statement made by co-accused during his custody before police has no force in law and place that in the charge-sheet itself there is clear mention that there was no debit transaction of Rs. 1.5 lacks found in the Bank statement of the petitioner as well as his wife Hamida Khatun.

19. Mr. D. Das, learned Additional Public Prosecutor relying on the decision of the Hon'ble Supreme Court in the case of *Gurwinder Singh -Vs- The State of Punjab and Another* decided on 07.02.2024 (Criminal Appeal No. 704/2024) submitted that unless circumstances justifies otherwise though "*bail is the rule, jail is the exception*" in ordinary penal offences but the same is not applicable in the case of the Unlawful Activities (Prevention) Act, 1987 and that the exercise of the general power to grant bail under the UA(P) Act is severely restrictive in scope.

20. Considered the submissions of both the parties. Perused the records of the case that was

called for from the Court of learned Sessions Judge, Barpeta as well as the decisions of the Hon'ble Apex Court, noted above, cited by the parties.

21. It is seen that the petitioner voluntarily gave shelter to his brother-in-law Jahidul Islam, son of Kazimuddin, who is the brother of his wife Hamida Khatun, one of the FIR named arrested accused person as well as the other FIR named accused person, namely, Jakir Hussain son of Haider Ali knowing fully well that they belong to the banned organization PFI and CFI that were banned by the Central Government on 27.09.2022.

22. However, considering the records of the case, the charge-sheet filed in it and the period of detention of the petitioner in custody, the Court is of the view that further custodial detention of the petitioner is no longer required in the Sessions Case No. 125/2023 pending before the learned Sessions Judge, Barpeta arising out of Barpeta Police Station Case No. 175/2023, corresponding to G.R. Case No. 566/2023.

23. Accordingly, the petitioner, namely, **Zakir Hussain**, son of Abdur Rezzak, resident of Village - Kayakuchi Pam, Post Office - Naligaon, Police Station - Barpeta, District - Barpeta, shall be released on bail in said Sessions Case No. 125/2023 pending before the learned Sessions Judge, Barpeta arising out of Barpeta Police Station Case No. 175/2023 on furnishing bail bond of Rs.2,00,000/- with two local sureties each of the like amount to the satisfaction of the learned Sessions Judge, Barpeta on conditions that the petitioner **(i)** shall appear before the learned Sessions Judge, Barpeta as and when he is required in said Sessions Case No. 125/2023 arising out of Barpeta P.S. Case No. 175/2023; **(ii)** shall not leave the territorial jurisdiction of the learned Sessions Judge, Barpeta, without obtaining its prior written permission; **(iii)** shall not hamper with the investigation, or tamper with the evidence of the case and **(iv)** he shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer.

24. In addition to the above, the petitioner shall also furnish a bond before the learned Sessions Judge, Barpeta to the extent that he shall make himself available before the said Court during the trial and any other stages of said Sessions Case No. 125/2023 and further whenever he is required in the said case.

25. Any violation of the aforesaid terms and conditions by the petitioner, named above, the bail granted to him in said Sessions Case No. 125/2023 arising out of Barpeta P.S. Case No. 175/2023 shall stand automatically vacated.

26. With the above observations and directions, this bail application of the petitioner, named above, in said Sessions Case No. 125/2023 arising out of Barpeta P.S. Case No. 175/2023 stands disposed of.

JUDGE

Comparing Assistant