

GAHC010286362023



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

Case No. : Bail Appln./4582/2023

ABU BAKKAR SIDDIQUE
S/O LATE ATAB ALI
R/O JOSHIHATIPARA
P.S. BARPETA
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

01.02.2024

Heard Mr. A Ahmed, learned counsel for the accused and Mr. B. Sharma, learned Addl. P.P. for the State respondent.

2. This application, under Section 439 of Cr.P.C., is preferred by accused namely, **Abu Bakkar Siddique**, who has been languishing in jail hazoot since 06.08.2022, 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 IPC, 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 an FIR lodged by one Shri Ranjan Doley, Inspector of Police, Barpeta P.S. to the effect that during investigation of the Barpeta P.S. Case No.268/2022, under Sections 120(b)/121/121A of the IPC, read with sections 17/18/18(B)/19/20 of 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 IPC, read with Section 17/18/18(B)/19/20 of Unlawful Activities (Prevention) Act, 1967, regarding existence of an important Jihadi (terror) outfit based in Bangladesh and operating in Barpeta District. It was learnt that several modules of the proscribed Ansarullah Bangla Team (ABT) having affiliation to Al-Qaeda in the Indian Sub-Continent (AQIS) are active in Barpeta District and that members/supporters of ABT were indoctrinating and motivating the youth/men 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 criminal conspiracy with other members of the ABT 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, harbouring, recruiting and collecting funds for organizing and committing unlawful and terrorist activities in

the name of Jihad.

4. The allegation against the present accused is that he met the core member of the ABT/AQIS, Shaiful Islam at Dhakaliapara Madrassa. He spoke about the idea of "Gazawa-e-Hind" which is main agenda of Ansarul Bangla Team (ABT) and the said war will destroy whole of Hindustan and establish an Islamic state. And at the instance of Shaiful Islam he voluntarily become a member of ABT and he helped Shaiful in spreading and recruiting new members of ABT. He had also undergone week long jihadi training secretly and he did posses some leaflets of ABT in his residence and the same were seized.

5. Mr. Ahmed, the learned counsel for the accused submits that the accused was arrested on 06.08.2022, and since then they have been languishing in jail hazoot for more than one year four months. Further, Mr. Ahmed submits that except some leaflets no incriminating materials have been recovered and seized from the possession of the accused. Mr. Ahmed further submits that the accused is not a member of Ansarul Bangla Team (ABT) and the said organization is not a banned organization. It is the further submission of Mr. Ahmed that the case has already been charge sheeted and that as many as 56 witnesses have been cited in the charge sheet and though charge have been framed against the accused on 27.07.2023, till date only one witness is examined by the prosecution side and there is no immediate chance of completion of trial. Mr. Ahmed also submits that the accused is innocent and he will appear before the court regularly and that some of the co-accused have already been enlarged on bail by this court and on the ground of parity, the accused is also entitled to bail.

6. On the other hand, Mr. B. Sharma, learned Addl. P.P. has opposed the petition on the ground that having found sufficient materials against the

accused persons, the learned court below had already framed charges only on 27.07.2023, and one witness has already been examined by the learned court below. Mr. Sharma further submits that if enlarged on bail the accused may commit similar offences and there is also possibility of jumping bail, and therefore, it is contended to dismiss the petition.

7. Having heard the learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record of the learned court below.

8. It appears that the accused were arrested on 06.08.2022, and since then he has been languishing in jail hazoot for more than one year four months. The scanned copy of the record of the learned court below reveals that the learned court below had framed charge against the accused persons under sections 18/19/20 of UA (P) Act and so far only one witness has been examined by the learned court below out of 56 witnesses cited in the charge sheet. Since large numbers of witnesses are cited in the charge sheet there is no likelihood of trial being completed within a reasonable time.

9. Since charges have been framed against the present accused, along with other accused persons, under sections 18/19/20 of UA (P) Act, and that the bar of Section 43(D) (5) of the UA(P) Act is applicable. But, it has been well settled in the case of **Union of India vs. K.A. Nazib** reported in **(2011) 3 SCC 713** that Section 43(D)(5) of the UA(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. And in the case of **National Investigating Agency vs. Zahoor Ahmed Shah Watali** reported in **(2019) 5 SCC 1** it 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.

10. In the instant case, the scanned copy of the record of learned court below indicates that except some leaflets no incriminating article has been recovered from the possession of the present accused. But, having reckoned the entire materials collected against the present accused in the case diary available in the record of the learned court below, in the light of the submission of learned counsel for the accused and without commenting on the merit of the same, this court is of the view that a prima-facie case is made out for granting bail to the accused.

11. It also appears that some of the co-accused has already been enlarged on bail by this court on the ground that there is unlikelihood of completion of trial within reasonable period as large numbers of witnesses were cited in the charge sheet and till date only one witness have been examined by the prosecution side. The present accused also stands in the same footing with those accused, who have already been enlarged on bail. In this regard observation made by Hon'ble Supreme Court in the case of **Satinder Kumar Antil vs. CBI & Another** reported in **(2022) 10 SCC 51**, is worth mentioning, where it has been 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.”

12. Having considered above, and also having adjudged the submissions

of learned Advocates of both sides and having gone through the materials collected in the charge sheet, and further having reckoned the materials available in the case diary as a whole, and further balancing the period of detention with that of the nature and gravity of the offence this Court is of the view that a prima facie case for granting bail to the accused person is made out.

13. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- (Rupees fifty thousand) only, with one surety of like amount to the satisfaction of the learned **Sessions Judge, Barpeta**, the accused **Abu Bakkar Siddique** shall be enlarged on bail, in connection with the Barpeta P.S. Case No. 763/2022. It is being clarified that the above observations, made herein above, is only for the purpose of disposing of this bail application not on the merit of the case.

14. In terms of above, this bail application stands disposed of.

Comparing Assistant

JUDGE