

GAHC010291022023



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

Case No. : I.A.(Civil)/3869/2023
in
WP(C)/7519/2023

KORIMAN NESSA @ PARIMAN NESSA
W/O- MD. SALAM ALI
PERMANENT RESIDENT OF VILL.- BHAKUAMARI
P.S. SALBARI
DIST. BAKSA
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
NEW DELHI-110001.

2:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI-110001.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GHY-781006.

4:THE DEPUTY COMMISSIONER
BAKSA
PIN- 781343.

5:THE SUPERINTENDENT OF POLICE (B)

BAKSA
PIN- 781343
ASSAM
6:CO-ORDINATOR

NATIONAL REGISTRAR OF CITIZENS
BHANGAGARH
GHY-781005.

Advocate for : MR A W AMAN
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 5 ORS

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

19.01.2024

(M Thakuria, J)

Heard Mr. A. W. Aman, learned counsel for the applicant. Also heard Ms. A. Gayan, learned Central Government Counsel for the opposite party No. 1; Mr. A. I. Ali, learned Standing Counsel, Election Commission of India for the opposite party no. 2; Ms. A. Verma, learned Standing Counsel, Home Department, Assam for the opposite party Nos. 3 and 5; as well as Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for the opposite party No. 4.

2. Mr. Aman, learned counsel for the applicant, submits that in pursuant to a reference of Superintendent of Police (Border), Baksa, vide S.P. Ref. Case No. 604/2010, the learned Member, Foreigners' Tribunal, Baksa, Assam registered a case being F.T. Case No. 72/BAKSA/2019 and issued notice to the petitioner to appear before the Tribunal on 03.09.2019. Accordingly, the petitioner appeared before the Tribunal, but due to Covid-19 pandemic and also for personal inconvenience, she could not appear before the Tribunal regularly and file her relevant documents to prove herself to be Indian citizen. Accordingly, , the said F.T. Case before the Tribunal proceeded in her absence and the *ex parte* order was passed on 29.10.2021 declaring her as a foreigner of post 1971 stream. It is stated that she was not aware about the said *ex parte* order dated 29.10.2021 passed by the Tribunal against her and she came to know about the same only when she was detained by the authorities and sent to Matia Detention Center on 21.10.2023. It is further submitted that the petitioner is an Indian citizen by birth, but due to Covid-19 pandemic, she was not in a position to appear before the Tribunal and to furnish

the relevant documents to prove herself to be the Indian citizen. As she did not receive any notice from the Tribunal, she was not aware about the *ex parte* hearing fixed in the case and also was not aware about the *ex parte* order dated 29.10.2021 passed against her. Mr. Aman, stated that the petitioner has sufficient documents to satisfy the learned Member, Foreigners' Tribunal, Baksa, Assam to prove her citizenship/nationality, if she is released from the detention camp and is given an opportunity to contest the case by filing all the relevant evidence both oral and documentary.

3. The learned Standing Counsel, Home Department, Ms. A. Verma, submitted that the applicant after filing her written statement in said F.T. Case No. 72/BAKSA/2019 before the Foreigners' Tribunal, Baksa and after the withdrawal of the restrictions imposed during Pandemic Covid-19 did not even bother to enquire about the said proceeding and she appeared before this Court only after her detention on 31.10.2023 pursuant to the said *ex parte* order dated 29.10.2021 passed by the Tribunal concerned. As such, Ms. Verma, learned Standing Counsel, Home Department objected in granting bail to the applicant/petitioner/proceedee.

4. Considering the submission made by the learned counsel for both the sides and on perusal of the relevant records in original in the connected writ petition, being WP(C) No. 7519/2023 by a separate order passed today we have already set aside and quashed the said *ex parte* order dated 29.10.2021 passed by the Foreigners' Tribunal, Baksa in the concerned F.T. Case No. 72/BAKSA/2019, pursuant to which the petitioner has now been taken into custody, wherein, we have remanded the matter back to the Foreigners' Tribunal, Baksa enabling the applicant/petitioner/proceedee to file her Evidence-on-Affidavit with relevant documents on or before 08.02.2024 on which she relies on to prove her citizenship/nationality.

5. Considering the said aspect of the matter, we are of the opinion that it is a fit case where the applicant can be released on bail presently detained in the Matia Detention Center, District-Goalpara, taken into custody in pursuance of said *ex parte* order dated 29.10.2021 passed by the Foreigners' Tribunal, Baksa in the F.T. Case No. 72/BAKSA/2019.

6. Accordingly, we find that the applicant/proceedee of the connected WP(C) No. 7519/2023 is entitled for her release on bail forthwith subject to the condition of furnishing a bail bond of Rs.5,000/- with one local surety of the like amount to the satisfaction of the Superintendent of Police (Border), Baksa.

7. Before her such release on bail, the Superintendent of Police (Border), Baksa shall obtain necessary information and documentation as required under the Rules as well as the biometrics of the

iris of both eyes, the fingerprints of both hands and the photographs of the applicant/petitioner for securing her presence and thereafter, she shall be allowed to remain on bail.

8. It is made clear that without giving the full details of her present address and/or and also the full details of her destination before the Superintendent of Police (Border), Baksa and without obtaining any prior written permission from the said authority, the applicant/petitioner shall not leave the jurisdiction of said Superintendent of Police (Border), Baksa.

9. Failure on the part of the applicant/petitioner to comply with the aforesaid directions, the bail granted to her shall stand automatically vacated and she shall be liable to be taken back into custody.

10. With above observation and direction, this Interlocutory Application stands disposed of.

JUDGE

JUDGE

Comparing Assistant