

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**BAIL APPLICATION 19 OF 2015**

Sri Dhanu Kalai,  
S/O. Late Sasamani Kalai,  
Resident of Taidu,  
P.O. & P.S.-Taidu,  
District-Gomati, Tripura.

..... **Accused-petitioner.**

**- V e r s u s -**

The State of Tripura.

..... **Respondent.**

**BEFORE**  
**HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the petitioner : Mr. P.K. Biswas, Sr. Advocate,  
Ms. C. Bhowmik, Advocate.

For the respondent : Mr. A. Ghosh, P.P.

Date of hearing & judgment : 26.02.2015.

Whether fit for reporting : **YES.**

**JUDGMENT & ORDER(ORAL)**

This is an application for grant of bail filed by one Dhanu Kalai who is alleged to have committed offences punishable under sections 153(A)/153(B)/120(B)/121(A)/122 of the Indian Penal Code (IPC) and under sections 10/13 of Unlawful Activities (Prevention) Act, 1967.

2. Briefly stated, the facts are that in the year 1998, an FIR was lodged by Sri Debajyoti Gautam, Officer-in-charge of the East Agartala Police Station in which it was alleged that certain persons namely Biswa Mohan Debbarma, S/O. Braja Kishore

Debbarma, Kamini Debbarma, S/O. Khirode Debbarma, Bishnu Prasad Jamatia alias J. Bosong, S/O. Sridam Manik Jamatia, Janabir Debbarma, S/O. Birgagan Debbarma, Tapan Kalai, S/O. Sri Bhuvan Kalai, Nayanbashi Jamatia, S/O. Satish Jamatia and the present petitioner Dhanu Kalai, S/O. Samodi Kalai along with many others had formed an unlawful organization named as National Liberation Front of Tripura (NLFT) with intent to establish an independent "Borok Land Twipra". It was alleged that these persons wanted to secede from the Indian Union and establish an independent country outside the Union of India and that this militant organization was acting in collusion with other armed secessionist organization such as N.S.C.N. of Nagaland etc. and was inciting the indigenous people of Tripura to secede from the Indian Union. It was also alleged that this unlawful organization was engaged in several violent and unlawful activities like murder, dacoity, kidnapping, extortion etc. etc.

3. The complaint was initially lodged against 86 persons including the petitioner. Charge-sheet was filed against 86 persons but the trial was split up and initially the trial was to continue against only 11 persons. The rest of the accused were declared to be absconders. Thereafter, 2 more persons including the petitioner were arrested and, therefore, the proceedings were to continue against 13 out of the 86 accused. Out of these 13 accused, other than the petitioner Dhanu Kalai, all the other 12 accused have been enlarged on bail. Out of the 12 accused who have now been enlarged on bail, it is stated by the learned Public Prosecutor that

three accused persons namely Biswamohan Tripura, Sabir Debbarma and Utpal Debbarma have fled away to Bangladesh and are absconding. It is, therefore, urged that bail should also be refused to the petitioner because in case he is enlarged on bail, he may also flee away and continue his illegal activities from Bangladesh.

4. On the other hand, Mr. P.K. Biswas, learned Sr. Counsel appearing for the petitioner, submits that the complaint was lodged in the year 1998 when extremism was rampant in the State of Tripura. Thereafter, many developments have taken place and the Government itself has introduced a policy for bringing back the militants and ensuring that they join society, become part of the mainstream and live like normal citizens. This Court can also take judicial notice of the fact that in a large number of cases, some of them of very serious nature, the State has withdrawn the prosecution against many of the accused. In the present case also though Kamini Debbarma was one of the main leaders of the organization, the prosecution against him has been dropped and the Government is proceeding on a pick and choose method against some persons and dropping prosecution against some persons.

5. It is contended by Mr. P.K. Biswas, learned Sr. Counsel, that on going through the entire record, there is not a shred of direct evidence against Dhanu Kalai except the fact that he was a member/leader of the N.L.F.T. The allegations relate to

the period from 1993 to 1996 mainly and with regard to some of the allegations trials have been held and completed. The allegations have to be very specific in nature and these proceedings cannot be permitted to continue for eternity. At this stage, it may be pertinent to point out that a learned Single Judge of the then Gauhati High Court had rejected the bail application of Utpal Debbarma on 20-07-2012 but had further directed that the trial Court should ensure that the trial is drawn to its finality as expeditiously as possible.

6. The record of the trial Court proceedings unfortunately makes depressing reading. On 17-11-2012 the matter was pending in the Court of the Sessions Judge, West Tripura, Agartala who noted that out of the 86 accused persons, the lower Court had committed the case for trial against 11 of the accused persons. The case was ordered to be registered as a Sessions Trial case and the case was then transferred to the file of Addl. Sessions Judge, Court No.4, West Tripura, Agartala. Thereafter, the file was received in the Court of the Addl. Sessions Judge, West Tripura, Agartala on 11-12-2012. More than 2 years and 2 months have elapsed and even Charge has not been framed till date. All that is happening before the trial Court is that on one day some accused appear and on the next day absent themselves and another set of accused disappears and some others appear. Other than recording the presence or absence of the accused, no effective hearing has been done for more than 2 years despite a direction by a learned Single

Judge of this Court that the trial should be taken to its logical conclusion.

7. Another surprising aspect of the matter is that though a learned Single Judge of this Court had specifically rejected the bail application filed by Utpal Debbarma vide a detailed order dated 20-07-2012 passed in Bail Application No.35 of 2012, the trial Court vide order dated 27-10-2014 released the said accused on bail. The relevant portion of the order reads as follows:-

*“A bail petition is filed on behalf of custody accused Utpal Debbarma.*

*Learned Addl.P.P. Mr. N.C. Das is present.*

*Heard learned advocates of both sides.*

*Considered. The prayer is allowed.*

*Accused Utpal Debbarma shall be released on bail on his furnishing a bond of Rs.50,000/- (Rupees fifty thousand), with two sureties of the like amount, out of whom, one should be Group-C government employee, i.d. to J.C till 26.11.2014.*

*No bail petition is filed for another accused Dhanu Kalai.”*

8. The learned trial Court did not give any reasons for granting bail to Utpal Debbarma. The order shows that only the prayer has been considered and allowed and he has been ordered to be released. There is no reference to the detailed order passed by Justice S. Talapatra in Bail Application No.35 of 2012 giving detailed reasons for rejecting the bail application. It appears that even the learned Public Prosecutor did not care to bring this order to the notice of the learned Sessions Judge.

9. As pointed out above, initially only 11 persons were arrayed before the Court as accused. During trial, one Sabir Debbarma was arrested and he was granted bail by a learned Single Judge of this Court on 17-10-2013. It appears that the petitioner Dhanu Kalai was arrested in connection with some other case relating to Radhapur Police Station case No.09 of 2012 and was in custody at Central Jail, Agartala. He was produced in the trial out of which the present proceedings arise on 07-08-2013 and was shown to have been arrested in this case on 06-08-2013. Therefore, he has been behind bars for more than 1½ years.

10. Out of the 13 accused arrayed before the trial Court, 12 accused were granted bail, 11 by the trial Court and one by this Court. As pointed out above, the trial Court even granted bail to Utpal Debbarma whose bail application had been rejected by this Court without even giving any finding that there was any change in the circumstances entitling Utpal Debbarma to grant of bail.

As far as the present petitioner is concerned, he has filed bail applications before the trial Court on more than one occasion and every time the bail application is rejected by a cryptic order stating that the petitioner is not entitled to grant of bail. Reference may only be made to the last order dated 30-01-2015 which reads as follows:-

*“Accused namely, (1) Dhanu Kalai is produced from J/C.*

*A bail petition is filed for him.*

*Learned Addl.P.P. vehemently opposed the bail prayer.*

*Heard both sides. Perused the case record.  
Considering all aspect, the bail prayer filed  
for accused Dhanu Kalai stands rejected.”*

11. The hallmark of any judicial order is that it should be supported by reasoning. If there is no reasoning in the order, then the order cannot be termed to be a reasoned and a judicious order. An order not based on reasoning is an arbitrary order. As pointed out above, in the order dated 27-10-2014 when Utpal Debbarma was ordered to be released on bail, no reasoning was given and when Dhanu Kalai was refused bail on 30-01-2015, there again is no reasoning. Such a practice is totally unacceptable. The orders may not be long and very detailed. They can be short orders but they must be reasoned orders showing what weighed with the Court while accepting or rejecting the prayer for grant of bail.

It appears that when the Public Prosecutor vehemently opposed the bail, the same was rejected and when the Public Prosecutor did not vehemently oppose the bail, the bail was granted. Bails are not granted or rejected only because of the view of the Public Prosecutor. That may be important but the Court must apply its own mind and not be swayed only by what is said by the Public Prosecutor.

12. In a case like the present one, where out of the 13 accused 12 had been granted bail, an even more onerous duty was cast upon the trial Court to ensure that he should treat all the accused equally and should not grant bail to some and reject the

bail applications of the others though they may be similarly situated. The allegations against all the accused persons are similar in nature. They may have held different posts in the N.L.F.T. but the nature of the allegations against all are the same. In fact, there are no specific allegations against the petitioner that he committed any particular offence. He being a senior office bearer of the N.L.F.T. is accused of being liable for being sent to Jail in regard to all of the crimes committed by the N.L.F.T. This Court is not at this stage deciding the question whether this can be done or not but if this is the case against the petitioner Dhanu Kalai, then the same is the case against all the other accused including those who have been granted bail.

13. One of the golden threads which runs through the Indian Jurisprudence is that all men are equal before the law. Be you so ever high, the law is above all. The law treats everybody as equals. On the same set of circumstances, the person should be treated equally and similar orders should be passed. Either bail applications of all the accused should have been rejected or the Court should have come to a conclusion that the charges against some of the accused persons are less grievous and they are entitled to bail and the charges against some of the accused are more grievous and, therefore, they are not entitled to bail. However, without analyzing the charges or the evidence by cryptic, laconic and single line orders, bail has been granted or rejected and this is not at all in consonance with the spirit of justice enshrined in our Constitution.

14. As far as the present petitioner is concerned, all the other persons who are arrayed as accused in the present case have been granted bail. The prosecution has failed to point out any special circumstances from the evidence which would show that the involvement of the petitioner Dhanu Kalai is to any extent more than that of Utpal Debbarma or Sabir Debbarma. They all have a similar role to play. There are as many as 102 witnesses cited in the case. As pointed out above, the trial Court has even failed to frame the Charge for more than two years. How can we expect that this trial shall come to an end in the near future?

15. Assuming for the sake of argument that the allegations are correct and the petitioner was a member of an unlawful organization, if he has now come back to the mainstream, even according to the policy of the government, a chance has to be given to him to reform himself. This reform cannot be done in jail but has to be done outside the jail. This Court can take judicial notice of the policies of the State wherein militants who have committed heinous crimes but surrendered along with arms are not only set free but are given monetary help to rehabilitate themselves. Today the situation with regard to militancy in the State of Tripura is fortunately one where militancy is coming to an end.

16. Therefore, I am clearly of the view that the petitioner should be granted bail but at the same time it has to be ensured that he does not misuse the facility of bail granted to him and

escape outside the country. It would also be pertinent to mention that petitioner Dhanu Kalai had already been granted bail in the other case. Therefore, the following order is issued:-

(i) That, the petitioner Dhanu Kalai shall be released on bail on his furnishing a bail bond in the sum of Rs.2,00,000/- (rupees two lakhs) with two public servant sureties in the like amount to the satisfaction of the learned trial Court;

(ii) That, the petitioner shall ensure that no threat directly or indirectly is given to any of the prosecution witnesses ;

(iii) The petitioner is further directed not to cause any hindrance in the investigation;

(iv) The petitioner shall not leave Tripura without permission of the appropriate Court;

(v) The petitioner shall report to the Police Station at Taidu of which he is a permanent resident on every Wednesday and Saturday at 10 a.m.;

(vi) The petitioner shall, however, not be required to report to the Police Station if he has to appear in the Court on any particular Wednesday or Saturday;

(vii) The petitioner shall appear before Court on each and every date of hearing and in case, he does not appear before Court, his bail bond shall be cancelled;

(viii) In case, the petitioner violates any of the conditions or tries to delay the trial, the prosecution shall be at liberty to apply for cancellation of bail.

17. In addition to the above directions given only in respect of the petitioner, the following directions are issued with regard to the trial of the main case:-

The trial Court shall take up the main case for hearing on 16-03-2015 and if any of the accused is not present before him, he shall fix a date in the week commencing 23-03-2015 for framing of Charge and all the accused shall be directed to be present on the said date. If any of the accused is not present, the bail bond of that accused shall stand cancelled and the police shall be free to arrest that accused. No accused shall be given liberty to remain absent unless he is admitted in a Government hospital. Thereafter, the Court shall frame the Charges in the week commencing 23-03-2015 and thereafter, the case shall be fixed for recording evidence of the prosecution in the week commencing 20-04-2015 and the evidence shall be recorded on day to day basis till the entire case is disposed of.

18. With these observations, the bail application is disposed of.

19. Send down the lower court records forthwith.

**CHIEF JUSTICE**