

GAHC010153542023



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

Case No. : Crl.A./275/2023

INDRA MOHAN BORA
S/O SHRI REBA KANTA BORA,
VILL.- CHALCHALI, PURANI GUDAM, UNDER SAMUGURI POLICE POLICE
STATION IN THE DISTRICT OF NAGAON, ASSAM.

VERSUS

NATIONAL INVESTIGATION AGENCY
REP. BY THE SPECIAL P.P., ASSAM.

Advocate for the Petitioner : MR Z KAMAR

Advocate for the Respondent : SC, NIA

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

Date : 11-01-2024

JUDGMENT & ORDER (ORAL)

(M, Zothankhuma , J)

Heard Mr. Z Kamar, learned senior counsel, assisted by Mr. D Nandi, learned counsel for the appellant. Also heard Mr. RKD Choudhury, learned Dy. SGI appearing for the respondent authorities.

2. This appeal has been filed against the impugned order dated 08.06.2023 passed by the learned Special Judge, NIA, Assam, Guwahati in Misc. (NIA) Case No.23/2023 rejecting the bail application submitted by the appellant.

3. The facts of the case is that due to a grenade blast that occurred on 15.05.2019 allegedly thrown by the accused No.(A-1) i.e., Pappu Koch Bokoliyal, an FIR dated 16.05.2019 was filed, which resulted in the registration of Geetanagar Police Station Case No.210/2019 under Sections 325/326/307/121 IPC read with Section 3/5 of the Explosive Substance (for short, ES) Act and Sections 10/13/16/20 of the Unlawful Activities (Prevention) Act, (for short, the UA(P) Act) 1967. Thereafter, in view of the gravity of the offence, the Ministry of Home Affairs, Government of India, vide Order No.11011/22/2019/NIA dated 24.06.2019, directed the National Investigation Agency (for short, NIA) to take over the investigation. Accordingly, Geetanagar Police Station Case No.210/2019 was re-registered as NIA Case No.RC-04/2019/NIA/GUW under Sections 325/326/307/121 IPC read with Sections 10, 13, 16 & 20 of the UA(P) Act and Sections 3 & 5 of the ES Act.

4. During investigation, a subsequent police case was registered as Satgaon P.S. Case No.147/2019, which was re-registered as NIA Case No. RC-05/2019/NIA/GUW under Sections 121, 121(A) and 122 IPC read with Section 25 (1B) of the Arms Act and Sections 10, 13, 18 & 20 of the UA(P) Act and Section 5 of the ES Act, 1908.

5. After completion of the investigation, a consolidated charge-sheet was

submitted by the respondent against eight accused persons. Subsequently, a supplementary charge-sheet was filed wherein three other persons who were absconding were charge-sheeted. The appellant herein is the accused No.(A-5) in the charge-sheet.

6. The learned trial court framed charges under Sections 18, 19, 38 and 39 of the UA(P) Act against the appellant on 03.02.2022, to which he pleaded 'not guilty' and claimed to be tried. Thereafter, the trial started and out of 177 prosecution witnesses, 20 witnesses have been examined by the learned trial court.

7. Mr. Z Kamar, learned senior counsel for the appellant submits that the accused No.(A-6) Amrit Ballav Goswami had been granted bail on 10.03.2021 in the case of Amrit Ballav Goswami Vs. NIA, reported in 2021 (2) GLT 751. Further, accused No.(A-8) Prakash Raj Konwar had been granted bail by a Division Bench of this Court, vide judgment and order dated 27.12.2022 in CrI.A No.136/2021. The learned senior counsel for the appellant submits that the appellant herein has been made an accused in the present case due to the fact that the tower location of the accused No.(A-1) Pappu Koch Bokoliyal @ Bijoy Asom on 26.04.2019 and 16.05.2019 showed that he was in Nagaon, which housed the residence of the present appellant. As such, the tower location having showed that Pappu Koch Bokoliyal was in Nagaon, the respondent's case was that Pappu Koch must have been with the appellant. As Pappu Koch was alleged to be the person who threw the grenade on 15.05.2019 near the Central Mall at Guwahati, the appellant had provided logistic support to Pappu Koch, who was a member of ULFA(I) which was a terrorist organisation. He submits that the recovery of mobile phones from the appellant, which showed that the appellant had communicated 33 times with Pappu Koch through his mobile phone, was the reason that the respondents had come to an erroneous decision that the appellant was also

involved in the grenade blast that occurred near the Central Mall Guwahati.

8. The learned senior counsel submits that as only 20 out of 177 prosecution witnesses have been examined, despite the appellant being in judicial custody for more than four years seven months and twenty two days, the appellant should be released on bail in terms of the judgment of the Supreme Court in the case of *Union of India Vs. KA Najeeb*, reported in *(2021) 3 SCC 713*, as his rights under Article 21 of the Constitution of India has been violated.

9. Mr. RKD Choudhury, learned Dy. SGI appearing for the respondent, NIA, on the other hand, submits that the statement made by Sri Putul Baishya APS, Assistant Commissioner of Police Chandmari, recorded under Section 161 Cr.P.C. is to the effect that the appellant had stated during interrogation that Pappu Koch had contacted him over phone to pick him up from Nagaon Bus-stand and that the appellant had picked up Pappu Koch. Further the appellant had given shelter to Pappu Koch in his house on the night of 16.05.2019 and dropped him off in the Nagaon Bus-stand, the next day. He further submits that as per the statement given by PW-110 and PW-111 under Section 161 Cr.P.C., the appellant had admitted to them that he was directly involved in the grenade blast that occurred in Guwahati on 15.05.2019 and that he knew Pappu Koch @ Bijoy Asom, who he met after the incident had occurred. The learned Dy.SGI also submits that in view of the discovery statement made by the appellant, two mobile phones, SIM Cards, Memory Cards, four pendrive, knives etc., were recovered from the hole made in the earth from the back of the appellant's house. As the CDR of the mobile of the appellant showed that he had been in constant touch with Pappu Koch, the appellant having been a part of the terrorist act involved in the grenade blast, the prayer for bail should be rejected, as the grant of the same would not be in the interest of the society at large.

10. We have heard the learned counsels for the parties.

11. Section 43D(5) of the UA(P) Act provides that no person accused of an offence punishable under Chapters IV and VI of the UA(P) Act should be released on bail, unless the Public Prosecutor has been given an opportunity of being heard. It further provides that such an accused person shall not be released on bail, if the Court is of the opinion, on a perusal of the case diary or the charge sheet, that there is reasonable ground for believing that the accusation against such a person is *prima facie* true.

12. In the present case, charge has been framed on 03.02.2022 and as such, it is clear that a *prima facie* case has been found by the learned trial court to be made out against the appellant. However, this does not preclude this Court from considering afresh, whether the accusation against the accused person is *prima facie* true. Be that as it may, the Hon'ble Supreme Court in the case of KA Najeeb (supra) has held that the provisions of presence of statutory restrictions, like [Section 43D \(5\) of UAPA](#), *per se* does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. It has further held that both the restrictions under a statute as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. It has, however, provided that the rigors of the statutory provisions would have to give way/melt, where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would be a safeguard against the condition for denial of bail, which can result in the breach of the constitutional right of an accused person, if only Section 43D(5) of the UAPA was the sole benchmark for deciding bail applications under the UA(P) Act.

13. In the present case, the questions to be decided by the learned trial court relates to Sections 18, 19, 38 and 39 of the UA(P) Act. Section 18 provides for punishment for conspiracy, Section 19 provides for punishment for harboring any terrorist, Section 38 relates to a person being a member of a terrorist organisation, while, Section 39 is in relation to support being given to a terrorist organisation.

14. In the present case, assuming that the appellant is a member of the terrorist organisation, the appellant can be convicted for being a member of a terrorist organisation. However, keeping in view the facts of this case, the further requirement of the respondents would be to show that he was involved in the blasting of the grenade along with the (A-1) Pappu Koch. In the present case, the evidence already adduced does not indicate that he was involved in the blasting of the grenade, though he might be a member of the terrorist organisation. The question of harboring a known terrorist would also have to be proved during trial. Statements given under Section 161 Cr.P.C. are not admissible as evidence and as such, no finding can be based on the same. Though the statements made under Section 161 Cr.P.C. may be considered for the purpose of granting or denying bail, the same not being substantive evidence, Section 161 statements have no evidentiary value.

15. The above being said, the charge-sheet filed by the respondent shows that one Amrit Ballav Goswami (A-6) who had apparently made 101 mobile phone calls to other co-accused in relation to the present case, has been released on bail by this Court, vide judgment and order dated 10.03.2021 passed in CrI.A.No.13/2021, on the ground that Amrit Ballav Goswami was involved in the incident of lobbying the hand grenade on 15.05.2019. Besides the above, Amrit Ballav Goswami was a permanent resident of Golaghat and as such, this Court did not see any possibility of him fleeing the

trial. Similarly, accused No.(A-8) Prakash Raj Konwar was also granted bail by this Court, vide judgment and order dated 27.12.2022 in CrI.A No.136/2021, on the ground that his case was similar to the case of (A-6) Amrit Ballav Goswami. Paragraphs 82 and 84 of the Judgment and order dated 27.12.2022 in CrI.A. No.136/2021 is reproduced below:

“82. We are also persuaded to take the view that the case of the appellant Prakash Rajkonwar bears close resemblance with Amrit Ballav Goswami which enables the appellant to claim parity with him for the purpose of grant of bail. As discussed above, the basic charges against Amrit Ballav Goswami as also reflected in the order of this Court in CrI.A. No.13/2021 are that, (i) Amrit Ballav Goswami is a active member of ULFA, (ii) inspite of being surrendered, he is still maintaining links with ULFA and engaged in subversive activities and anti-national activities including terrorist acts, (iii) he is an active member of ANMMMTA, a frontal organization of ULFA(I), (iv) he has been providing ideological support to ULFA and propagating its ideology, (v) he posted a song relating to ULFA(I) in Facebook motivating people to fight against the Indian Government and he is using Facebook and G.Mail Id to communicate with the members of the ULFA cadres, (vi) he is encouraging people to take up arms struggle against the Union of India and he is encouraging the youths to join ULFA, (vii) the CDR analysis of the mobile phone shows that he is in contact with the ULFA cadres and other co-accused Prakash Rajkonwar, Pranmoy Rajguru and Jahnabi Saikia. If we compare the basic charges against the appellant Prakash Rajkonwar, these appear to be similar to that of Amrit Ballav Goswami that (i) he is an active member of ULFA, (ii) he is involved in subversive anti national activities (iii) he is encouraging anti national activities by using social media posts, (iv) he is also a member of the ANMMMTA, a frontal organization of ULFA, (v) he is propagating the ideology of ULFA to work the people, (vi) he is using his Facebook and G.Mail to connect with the cadres of ULFA, (vii) he is engaged in the unlawful activities, (viii) he has been in contact with other ULFA cadres and co-accused Pranmoy Rajguru, Jahnabi Saikia and Amrit Ballav Goswami. The only additional charge against the appellant Prakash Rajkonwar is the recovery of PDF files. As discussed above, the said PDF files are not illegal materials whose possession is

banned or prohibited and also nothing has been shown to indicate that the said material was used for the purpose of making explosives, IED etc. It is merely a possession of certain harmful materials without showing how these were being used for other persons or that these were used actually for terrorist activities. As regards other allegations, these appear to be same as Amrit Ballav Goswami. In respect of Amrit Ballav Goswami, this Court, after examining the charges against him took the view that first of all, ANMMMTA is social organization which has not yet been banned, and that it is a frontal organization of ULFA has not been shown. As regards, CDR, particulars of the date and time, have not been shown. Though in the present case, in the case of appellant Prakash Rajkonwar, the same has been shown, yet, it does not disclose as to the nature of communication between the appellant Prakash Rajkonwar and other accused persons to implicate him in the criminal act of the bomb blast. Therefore, the case against the appellant Prakash Rajkonwar appears to be similar to that of Amrit Ballav Goswami."

"84. In that view of the matter, we are of the opinion that apart from the reasons we have discussed in the preceding paragraphs, we are also persuaded to take the view that the case of appellant Prakash Rajkonwar appears to have close resemblance with that of Amrit Ballav Goswami without any substantial difference as regards the allegations against them and as such, we are of the view that the appellant Prakash Rajkonwar will be entitled to bail on this score also."

16. In the present case, the contents of the communication between the appellant and (A-1) is not known, so as to link the appellant with the grenade blast. Further, the appellant has been in judicial custody for four years, seven months and twenty two days. Keeping in view the fact that only 20 out of the 177 prosecution witnesses have been examined and the fact that the co-accused i.e. Amrit Ballav Goswami and Prakash Rajkonwar have been released on bail in this case, the present appellant, namely, Indra Mohan Bora should also be released on bail, keeping in view Article 21 of the Constitution of India. Consequently, bail is granted to the appellant on a bail bond of Rs.50,000/- (Rupees Fifty Thousand) with two sureties of the like amount,

to the satisfaction of the learned Special Judge, NIA Court, on the following conditions:-

1. That the appellant shall attend the trial court regularly without any default.
2. That the appellant shall not leave the territorial jurisdiction of the learned trial court, without prior permission.
3. That the appellant shall also surrender his passport, if any, to the learned trial court and he shall not intimidate the prosecution witnesses.

Violation of any of the above conditions would entail automatic cancellation of the bail order.

17. The appeal is accordingly allowed and disposed of.

JUDGE

JUDGE

Comparing Assistant