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

Case No. : WP(C)/6056/2019

SAMSUL HOQUE
S/O- AMZAD ALI @ AMZAT ALI, VILL- KARAITARI, P.S- FAKIRGRAM, DIST-
KOKRAJHAR, BTAD, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY ITS SECRETARY OF THE MIN OF HOME AFFAIRS, UNION OF
INDIA, NEW DELHI- 01

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 06

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 01

4:THE STATE COORDINATOR
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
G S ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781005

5:THE DEPUTY COMMISSIONER OF JORHAT
DIST- JORHAT
P.O
P.S AND DIST JORHAT
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
JORHAT
P.O
P.S AND DIST- JORHAT
ASSA

Advocate for the Petitioner : MR. A T SARKAR

Advocate for the Respondent : ASSTT.S.G.I.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE MR. SUDHANSHU DHULIA
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

10-05-2021

(Sudhanshu Dhulia, CJ)

The matter is taken up through video conferencing.

None appears for the petitioner. Mr. J. Payeng, learned standing counsel, Foreigners Tribunal, Mr. A. Bhuyan, learned standing counsel, Election Commission of India and Ms. L. Devi, learned standing counsel, NRC, are present.

This is a petition filed by the petitioner against the judgment & order dated 13.05.2019 passed by the Foreigners' Tribunal, Jorhat in F.T. Case No.JFT/567/2006, wherein he had been declared as a foreigner.

Without going into the merit of the case, the admitted position is that the

petitioner is in detention since 13.05.2019 and he will shortly be completing two years of his detention.

In consideration of the law laid down by the Hon'ble Supreme Court dated 13.04.2020 in *Suo Motu Writ Petition (Civil) No.1/2020 (In Re: Contagion of Covid 19 virus in prisons)*, which had been followed by a Division Bench of this Court later in *WP(C) (Suo Moto) No.1/2020 (Gauhati High Court -Vs- Union of India & Ors.)* dated 15.04.2020, a detinue is liable to be released after completing two years in detention or his furnishing personal bond of Rs.5,000/- (Rupees Five Thousand) and like amount of two sureties.

We, therefore, direct that the petitioner be released. However, under these strange and difficult circumstances, we would direct that the petitioner be released on a personal bond and one surety of Rs.5,000/- (Rupees Five Thousand) instead of two sureties.

In fact, we must reiterate that in view of the order of the Division Bench of this Court dated 15.04.2020 passed in *WP(C) (Suo Moto) No.1/2020*, no separate order needs to be passed in each case and the concerned authority are hereby directed, wherever such detenues are detained, to release them forthwith as and when they complete their two years of detention with the following modification that under these exceptional circumstances of the second wave of Covid-19 pandemic, they may be released on their personal bond of Rs.5,000/- (Rupees Five Thousand) and one surety instead of two sureties.

Let copies of this order be communicated to all the Superintendent of Police (Border) of all the districts, including the Superintendent and authorities of all the Jails and such detentions where foreigners are being detained. Let this be done within forty-eight hours from today.

We also make it very clear that in the order dated 15.04.2020 passed by

the Division Bench of this Court in WP(C) (Suo Moto) No.1/2020, there are certain directions. Those directions shall be complied with at the time of release of a detainee.

List after four weeks.

JUDGE

CHIEF JUSTICE

Comparing Assistant