GAHC010103462020

WWW.LIVELAW.IN

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

Case No. : Crl.A./171/2020

SHRI BHASKARJIT PHUKAN @ SWAGADITYA PHUKAN AND ANR
S/O SRI ULESWAR PHUKAN, R/O VILL. AMGURI PULUNGA GAON, P.O. PULUNGA, P.S. CHABUA, DIST. DIBRUGARH, ASSAM.

2: BHUPEN GOGOI
S/O LATE MOHAN GOGOI
R/O VILL. RAJABARI PULUNGA GAON
P.O. PULUNGA
P.S. CHABUA
DIST. DIBRUGARH
ASSAM

VERSUS

NATIONAL INVESTIGATION AGENCY
REPRESENTED BY PUBLIC PROSECUTOR NIA

:: BEFORE ::

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Advocates for the appellants : Mr. P.J. Saikia, Mr. R.S. Mishra,
: Mr. P. Bordoloi, Advocates.

Advocates for the respondent: Mr. D. Saikia, Senior Advocate
: Mr. Sathya Narayana, SC, NIA

Date of hearing : 20.10.2020, 05.11.2020

Date of judgment : **05.02.2021**.

JUDGMENT & ORDER

(CAV)

(K.R. Surana, J)

WWW.LIVELAW.IN

The Court is conscious of the observations made by the Supreme Court of India in the case of *State of Rajasthan Vs. Balchand, AIR 1977 SC 2447: (1977) 4 SCC 308*, which is quoted below:-

> *"**2**. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. We do not intend to be exhaustive but only illustrative.*
>
> ***3**. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. …"*

Similarly, the Court is also conscious of the observations made by the Supreme Court of India in the case of *Sanjay Chandra Vs. C.B.I., (2012) 1 SCC 40*, which is quoted below:-

> *"**21**. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*
>
> ***22**. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to*

WWW.LIVELAW.IN

secure their attendance at the trial but in such cases, `necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

***23**. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."*

2) Heard Mr. P.J. Saikia, learned counsel for the appellants. Also heard Mr. D. Saikia, learned senior counsel, assisted by Mr. Sathya Narayana learned standing counsel for the respondent.

3) This appeal under section 21 of the National Investigating Agency Act, 2008 (hereinafter referred to as the "NIA Act" for short) is directed against the impugned order dated 08.07.2020, passed by the learned Special Judge, NIA, Assam in Misc. Case (NIA) No. 10/2020, thereby rejecting the prayer for bail to the appellants.

4) On 10.12.2019, the Sub- Inspector of Police, posted in Chabua P.S. lodged an FIR stating, inter alia, that on 09.12.2019 at about 7.00 pm. when he along with his staff and the Addl. S.P. (HQ) were performing their law and order duty at Chabua Town, there was a gathering of about 6,000 persons to protest against the Citizenship Amendment Act (hereinafter referred to as "CAA" for short). The crowd was headed by one Akhil Gogoi and it blocked the railway track as a part of their economic blockade and the effort of the District Administration to remove the blockade went in vain. It was also stated that the leader of the crowd and some others criminally conspired against the police and they threw stones at the

WWW.LIVELAW.IN

informant and his party and as a result one of the stones hit the informant's mouth for which he sustained grievous injuries on his two teeth, upper jaw and upper lip. He was shifted to a private nursing home at Dibrugarh where he was administered stitches and provided with treatment. It was stated that it was an attempt to murder as a part of conspiracy against the police who were deployed there to maintain law and order situation. On receipt of the said ejahar, Chabua P.S. Case No. 289/2019 was registered under sections 120B/147/148/149/336/ 353/326/307 IPC. During investigation, sections 153A and 153B IPC and Section 15(1)(a) and 16 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "1967 Act" for short) was added. Subsequently, in compliance of the order no. 11011/34/2020/NIA dated 04.04.2020 issued by the Ministry of Home Affairs, Govt. of India, an FIR No. RC-01/2020/NIA-GUW dated 09.04.2020 (Chabua Case) was re-registered at the NIA Guwahati Branch Office under sections 120B, 147, 148, 149, 336, 353, 326 and 307 IPC and added sections 153A and 153B IPC and Section 15(1)(a) of the 1967 Act, arising out of FIR No. 289/2019 dated 10.12.2019, registered at the Chabua P.S. to investigate the disruption of supplies by economic blockade staged at railway track and national highway at Chabua town on 09.12.2019 and attempt to murder government functionaries on duty by throwing stones. The FIR was submitted before the learned Special Judge (NIA) on 09.04.2020 and investigation was taken up. The appellants, who were accused nos. 3 and 4 were arrested in connection with RC-01/2020/NIA/GUW on 11.05.2020 and since then they are in jail/judicial custody. As per the charge-sheet, the appellants (accused nos. 3 and 4) are both charged under sections 120B, 143, 147, 148, 149, 326, 307, 333, 353, and 427 of the IPC and section 16 of the 1967 Act.

5) It has been submitted that the accused no.1 is presently lodged at Central Jail, Guwahati. The accused no.2 was granted bail by the learned Sessions Judge, Dibrugarh by order dated 19.03.2020 in Crl. Misc. (B) No. 198/2020. It is also submitted that the custodial detention of the appellants is not required because they had been arrested after securing bail in connection with Chabua P.S. Case No. 292/2020. Assailing the impugned order of rejection of bail, the learned counsel for the appellants has submitted that custodial detention should be the last choice for the police and granting bail is the general rule as laid

WWW.LIVELAW.IN
down in numerous cases decided by the Supreme Court of India as well as by this Court. It is submitted that the Court may impose stringent conditions for grant of bail, which would ensure that the appellants appear before the Court during trial. It is submitted that from the tone and tenor of the FIR and the charge-sheet submitted by NIA, the accusations are primarily directed against the accused no.1. It is submitted that there is no complaint from any person that he or she was assaulted by the appellants by use of any weapon whatsoever. In this connection, it is submitted that the prosecution is relying on some photographs showing that the appellant no.1 is holding a sword and in this regard it is explained that there is no complaint that the said sword was used to terrorize people. It is submitted that even if the accusations against the appellants are accepted for the sake of argument, there is no way that anyone trained in law would believe that the accusations were prima facie true and, as such, it is submitted that the impugned order rejecting bail was not sustainable on facts and in law. It is further submitted that there was no material to link the appellants with commission of any act of terrorism and that the speeches and participation in protest against the CAA was in exercise of democratic right to protest, which is engrained under the doctrine of free speech and expression as guaranteed under Article 19(1)(g) and other provisions of Part-III of the Constitution of India. It is submitted that while rejecting bail, the learned trial Court did not consider any of the submissions made on behalf of the appellants for grant of bail. It is submitted that the prosecution has not made any effort to show why the appellants were required to be treated differently than the accused no.2, who was granted bail and no steps was taken by the prosecution to secure his arrest and detention, as such, it is submitted that gross illegality has been committed by the learned Court below in rejecting the prayer to enlarge the appellants on bail. It is submitted that the appellants have been detained by the prosecution as a coercive steps to subdue the spontaneous public protest against CAA, which had erupted throughout the State and, as such, the appellants have been detained as a part of political persecution of the appellants. Accordingly, it is submitted that the present appeal be allowed by granting bail to the appellants. In support of his submissions, the learned counsel for the appellants has placed reliance on the following cases, viz., (i) *Pradeep Ram Vs. State of Jharkhand & Anr., AIR 2019 SC 3193;* (ii) *National Investigating Agency Vs. Zahoor Ahmad Shah Watali, AIR 2019 SC 1734;* (iii) *State of Kerala Vs. Raneef, 2011 Crl.L.J. 982; (iv) Koshi Jacob Vs. Union of India, (2018) 11 SCC 756;* (v)

WWW.LIVELAW.IN

Kodungallur Film Society Vs. Union of India, (2018) 10 SCC 713; (vi) *In Re: Destruction of Public & Private Properties Vs. State of A.P. & Ors., (2009) 5 SCC 212*; (vii) *Hitendra Vishnu Thakur Vs. State of Maharashtra, (1994) 4 SCC 602;* (viii) *Rojen Boro Vs. National Investigation Agency, 2016 (4) GLT 803 (FB);* (ix) *Jayanta Kumar Ghosh Vs. State of Assam, 2016 (4) GLT 1*.

6) Per contra, the learned senior counsel for the respondent had submitted that the role of the appellants was clearly revealed in the charge-sheet. It is submitted that the appellants had provoked the mob to assault and to kill government officials on duty, to burn down government property and to create a fear psychosis amongst people of the State by burning tyres on National highways, State highways, etc, and railway station and thereby cause economic blockade in various parts the State. It is submitted that the charge-sheet contains sufficient materials to show that violent activities had been perpetrated in various parts of the State, which had paralyzed Govt. machinery and had also disrupted supply of essential goods in the State, causing economic blockade. In this regard, reliance is placed on the charge-sheet containing reference to the photographs and video seized by the investigating agency to project that the mob led by the appellants had caused damage to vehicles, facial injury suffered by police officer engaged in maintaining law and order. It is submitted that as per the call data record seized by the investigating agency, all the four accused in this case were in close contact with each others during the relevant period. It is also submitted that the accused no.1 led mob was planning to set on fire houses in a particular colony inhabited by people of a particular language group, which was an act of striking terror in a section of people of India and that the appellants were a part of such conspiracy. The learned senior counsel has read over the accusations against the appellants as morefully mentioned in paragraph 16.14(C) and 16.14(D) of the charge-sheet. It was submitted that the appellants were seeking parity in grant of bail as other three accused were released on bail, but in the case in hand, the respondent agency has produced materials from which it can be demonstrated that the appellants were leading the mob to commit acts of terror. It is further submitted that there was no attempt to demonstrate how the impugned order under appeal was faulty. It is submitted that once section 43D(5) of the UAP Act is

WWW.LIVELAW.IN

complied with and the learned Special Judge was satisfied that there were sufficient grounds to believe that a *prima facie* case is made out against the appellants, no bail can be granted to the appellants as there was no infirmity in the order impugned herein. In support of his submissions, the learned senior counsel for the respondent has placed reliance on the following cases, viz., (i) *National Investigation Agency Vs. Zahoor Ahmad Watali, MANU/SC/0458/2019*, (ii) *State through Deputy Commissioner of Police, Special Branch, Delhi V. Jaspal Singh Gill, MANU/SC/0128/1984*, (iii) *Jayanta Kumar Ghosh & Ors. Vs. State of Assam & Ors., MANU/GH/0540/2010*, (iv) *National Investigation Agency Vs. Victo Swu, MANU/GH/0796/2017*.

7) On a perusal of the statement made by PW-28, it is seen that he had stated about damage to railway station at Chabua and other railway stations resulting in loss and damage to railway properties during 09.12.2019 to 12.02.2019 and that he could visit the said stations only on 14.12.2019 to prepare assessment of loss and damage list and one complaint was lodged with the O/c., GRPS along with a copy of assessment. PW-29 had also stated about mob setting fire to Chabua Railway Station on 11.12.2019 and that the Station had to be shut down. The said witness could come out of his home only on 13.12.2019 and found the railway station partially burn down and furniture, control panel and other railway properties had been damaged. PW-34 had stated about rail blockade held on 09.12.2019 and he left the Station and came to know on 11.12.2019 that Chabua Station was partly burnt on 10.12.2019 and that on 11.12.2019, some people were still in damaging railway property.

8) It is also seen that in the photographs submitted along with the charge-sheet, the appellant no.1 has been identified by witnesses, and that he is seen brandishing a sword. The transcription of calls stated to be legally intercepted discloses detailed discussions by the appellant on plans to make protests when the Japanese Prime Minister and Prime Minister of the Country arrive at Guwahati and also for the purpose of getting media attention. The materials in the charge-sheet indicate participation of the appellants in the mob violence on 09.12.2019, led by the accused no.1 and they have been accused of leading

WWW.LIVELAW.IN

the violent mob to damage and destroy government property including railway property and blockage of supply essential to life of community in India by striking fear. There is sufficient material to show that the roads including NH-37 were blocked with burning of tyres, bringing the economic activities to a complete standstill during the relevant period.

9) The learned counsel for the appellants had cited the case of *Pradeep Ram (supra)* to project that while registering Chabua P.S. Case No. 289/22019, the police had added the provisions of 1967 Act, re-registration of FIR by the NIA was not sustainable and that the investigation by NIA was only a ploy to delay release of the appellants on bail. The said proposition cannot be subscribed because of the fact that the Govt. of India, Ministry of Home Affairs by order no. 11011/34/ 2020/NIA dated 04.04.2020 authorised NIA to take up investigation and based on such order, an FIR No. RC-01/2020/NIA-GUW dated 09.04.2020 (Chabua Case) was re-registered at the NIA Guwahati Brach Office under sections 120B, 147, 148, 149, 336, 353, 326 and 307 IPC and added sections 153A and 153B IPC and Section 15(1)(a) of the 1967 Act, arising out of FIR No. 289/2019 dated 10.12.2019, registered at the Chabua P.S. It is seen that on issuance of such an order, the provisions of Section 6(6) of NIA Act, there is a bar for the police officer of the State Government to proceed with the investigation and they are required to transmit the relevant documents and records to NIA. Section 8 of the NIA Act also gives power to the NIA to investigate related offences while investigating 'scheduled offences'. Therefore, after issuance of order dated 04.04.2020, it was not within the competence of the police officer of the State to proceed with the investigation and thus, the Court is inclined to hold that the FIR, which was re-registered on 09.04.2020, cannot be said to be a second FIR, rather the re-registration of the FIR on 09.04.2020 appears to be only a procedural act to initiate the investigation and trial of the appellants and other co-accused under the NIA Act and that such re-registration is neither barred nor it can be held that there is a second FIR as projected by the learned counsel for the appellants. The law in this regard is well settled in paragraphs 39 to 43 of the case of *Pradeep Ram (supra)* cited by the learned counsel for the appellants. Therefore, the said case does not help the appellants.

WWW.LIVELAW.IN

10) As already indicated herein before, as per the charge-sheet submitted in NIA Case No. RC-01/2020 NIA-GUW, the appellants are charged under sections 120B, 147, 148, 149, 336, 353, 326 and 307 and added sections 153A and 153B of the IPC and sections 15(1)(a) read with 16 of the UAP Act.

11) The learned counsel for the appellants had argued to portray before the Court that the materials collected against the appellants during investigation was not incriminating at all. It was stated that the allegations were vague, bereft of material particulars, contained inadmissible material and that there was nothing to show that the appellants were either members of any proscribed organisation or that they had participated in any activity which fell within the meaning of 'terrorist act' covered by section 15 of the 1967 Act. It was argued that even assuming, without admitting, that the materials appended to the charge-sheet were admissible, even then the *prima facie* involvement of the appellants was not established.

12) In course of argument, both sides had given much stress on the provisions of section 43D(5) of the 1967 Act. In this regard, it is seen that there are other statutes which put restrictions on the power of Court to grant bail in relation to offences committed under those Acts. One of such statute is the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act). It is seen that the difference between the language used in section 43 of 1967 Act and MCOC Act has been explained by the Supreme Court of India in the case of *Zahoor Ahmad Shah Watali (supra)* and that the said judgment also lays down as to what should be the approach of the Court in deciding bail applications involving offences under Chapter IV and VI of the 1967 Act. Pursuant to the guiding principles as contained in para 23 to 29 and 32 of the said case, the Court is deciding this appeal. In the present case in hand, section 18 of UAP Act falls within Chapter IV of the UAP Act and section 39 of the UAP Act falls within Chapter VI of the said Act. In the case of *Zahoor Ahmad Shah Watali (supra)*, the accused-respondent was charged for offences punishable under sections 120B, 121, 121A IPC and sections 13, 16, 17, 18, 20, 38, 39 and 40 of the UAP Act.

WWW.LIVELAW.IN

13) The role of the appellant no.1, as stated in para-16.14(C) of the charge-sheet is as follows:-

i. A-3 in association with A-1 caused and coordinated to cause the economic blockade by causing NH-37 and railway lines blockage at Chabua on 09.12.2019. A-3 thus in association with A-1 led the blocking of supplies essential for life of community in India, which is a terrorist act as per section 15(1)(a)(iii).

ii. A-3 in association with A-1 and other accused led a mob in violation of section 144 of Cr.P.C. imposed at Chabua on 09.12.2019. A-3 in association with A-1 led the mob to cause damage to public / private properties with intent to strike fear in a section of people in India.

iii. A-3 in association with A-1 led the mob armed with weapons and attempt to cause death of public functionary by show criminal force and thus, caused grievous injury to the Government servant on duty, with intent to strike fear in a section of people.

iv. The mob, which A-3 was part of, and which was led by A-1 was planning to set fire at the house of Bengali dominate 'Amrawati Colony' with intent to strike terror in a section of people. The statement of witnesses reveals that the terrorist act of A-3 in pursuance of the conspiracy has led to fear in a section of people.

v. The oral evidence, documents, material object and technical evidence collected during the course of investigation, are establishing the prima-facie case against the accused for prosecution of the offences.

14) The role of the appellant no.2, as stated in para-16.14(D) of the charge-sheet is as follows:-

i. A-4 in association with A-1 caused and coordinated to be caused the economic blockade by causing NH-37 and railway lines blockage at Chabua on 09.12.2019. A-4 thus in association with A-1 led the blocking of supplies essential

WWW.LIVELAW.IN

for life of community in India, which is a terrorist act as per section 15(1)(a)(iii).

ii. A-4 in association with A-1 and other accused led a mob in violation of section 144 of Cr.P.C. imposed at Chabua on 09.12.2019. A-4 in association with A-1 led the mob to cause damage to public / private properties with intent to strike fear in a section of people in India.

iii. A-4 in association with A-1 led the mob armed with weapons and attempt to cause death of public functionary by show criminal force and thus, caused grievous injury to the Government servant on duty, with intent to strike fear in a section of people.

iv. The mob, which A-4 was part of, and which was led by A-1 was planning to set fire at the house of Bengali dominate 'Amrawati Colony' with intent to strike terror in a section of people. The statement of witnesses reveal that the terrorist act of A-4 in pursuance of the conspiracy has led to fear in a section of people.

v. The oral evidence, documents, material object and technical evidence collected during the course of investigation, are establishing the prima-facie case against the accused for prosecution of the offences.

15) Therefore, having regard to the facts of the present case in hand, the Court is of the considered opinion that as the dominant feature of the acts committed by the appellants in conspiracy with other co-accused was aimed to disrupt the economy of the State by inciting violent protests and caused shut down of towns in Tinsukia District. In the present case in hand, the charge-sheet clearly refers to burning of tyres (i.e. use of inflammable substances) by the protestors to cause rail, highway and internal road blockade and damaging vehicles plying on road with a view to terrorize innocent public on being provoked by the appellants taking the lead role in Tinsukia District, as such, the Court is constrained to hold that the four factors of clause (a) of subsection (1) of section 15 of 1967 Act is found to be *prima facie* attracted in this case in hand.

WWW.LIVELAW.IN

16) Based on the materials available on record, the Court is unable to hold that the violent protests throughout the State did not and/or could not have had any terrorizing effect on the harmony of the innocent public at large, rather, the Court is of the considered opinion that on being provoked by the appellants, as the violent protests by burning of tyres had caused rail, highway and internal road blockade, the same is sufficient to give rise to a critical law and order situation that as a whole had threatened the security of the State. The acts of violent protests were aimed to strike terror in all sections of people in India irrespective of caste creed and religion. Moreover, by burning inflammable substance, the supplies essential for life of community in the Country was disrupted. The learned counsel for the appellants did not make any attempt to explain as to what sort of peaceful protest was being carried out by the appellant no.1, when he was photographed brandishing a sword before a large crowd while actively participating in the protest programme. By use of violence the appellant led mob had brushed aside the noble concept of non- violent protest, which is popularly known as *Mahatma Gandhi's concept of satyagraha* and that such conduct of paralyzing the Govt. machinery, causing economic blockade, causing enmity between groups, disruption of public peace an widespread disharmony and dissatisfaction towards the Govt., are acts which are prejudicial for national integration and such acts squarely falls within the definition of "terrorist act" as defined in section 15 of the 1967 Act. The Court is also unable to accept the submissions made by the learned counsel for the appellants that strike calls and speeches made by the appellants fall within freedom of speech and expression as guaranteed by Part-III of the Constitution of India because of the fact that the call transcripts, which are accompanying the charge-sheet, clearly indicate that the appellant wanted to protest in such a manner which would disrupt all modes of rail and road transport and to paralyze Government machinery between 09.12.2019 to 12.12.2020. It was submitted that although there was rail blockade, but there are evidence to the effect that the railway administration had themselves suspended the rail traffic, but the Court cannot find fault with the said action of the railways because by such action, they had secured the lives of a large number of rail user and saved the trains and other railway property from being damaged by the violent protestors, who had reportedly burnt down Chabua Railway Station. The Court can hardly subscribe to the proposition that the act of burning down of a railway station and vandalizing some more railway stations cannot be termed to be a "terrorist act".

WWW.LIVELAW.IN

17) In light of the herein before referred materials available on record, and having regard to the requirement of section 43D(5) of the UAP Act, the Court is unable to record its satisfaction that the materials brought on record, in all probability, may not lead to conviction. The materials on record *prima facie* disclose culpability of the appellants and their involvement in the commission of alleged offences as morefully mentioned in the charge-sheet. It may be mentioned that the Court is conscious of the fact that the duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Having regard to the requirement of section 41D(5), the Court has made a deep probe into the matter so as to enable it to *prima facie* arrive at a finding that the materials collected against the appellants during investigation may be sufficient to lead to conviction. However, we hasten to add that this observation for the purpose of granting or refusing bail is undoubtedly tentative in nature, which would have no bearing at the time of trial, as such, it is provided that the learned trial Court would not be influenced by any observations made herein and the trial decided without being prejudiced by this order. In this regard, we may refer with profit to the ratio laid down by the Supreme Court of India in the case of *Puran Vs. Rambilas, (2001) 6 SCC 338*, and *Ranjitsing Brahmajeetsing Sharma (supra)*. Therefore, we further make it clear that the issue of admissibility and credibility of the material and evidence presented by the Investigating Officer would be a matter for trial.

18) It may pertinently be stated that Article 51-A of the Constitution of India makes it a fundamental duty for every person to safeguard public property and to avoid any kind of violence during the protests keeping in mind that resorting to violence during public protest results in breach of key fundamental duty of citizens. Therefore, this fundamental duty to protest peacefully must be exercised harmoniously with the right to freedom of speech and expression as guaranteed under Article 19(1)(b) of the Constitution of India and within the restrictions imposed by Article 19(2) in the interest of the State and its citizens. The act of blocking of the public road, disrupting free flow/movement of essential goods to the public in the State, setting fire to public offices and vehicles in the garb of public protest certainly cannot be termed as peaceful democratic protests in law. In that view of the

WWW.LIVELAW.IN

constitutional provisions, the Court is of the considered view that in the backdrop of facts and circumstances that emerged from the documents on record, it cannot conclusively be said at the present stage of trial of the case that the appellant has been unreasonably deprived of the right of Article 21 of the Constitution of India.

19) In view of discussions above, the materials relied upon by the prosecution *prima facie* shows that the appellants had not only led the protests, but had provoked people to join him and that upon directions issued by the accused no.1, the supplies essential to life of the community of the Country was disrupted in the State. The strike call given by the appellants is projected to be instrumental in violent protests, and damage or destruction to vehicles of para-military forces, which is used for defence of the Country. Fire caused by burning of inflammable tyres is projected to have caused damage or destruction of public property. Fire was also the cause of destruction of Chabua Railway Station. Therefore, the Court is of the considered opinion that the cases cited by the learned counsel for the appellant does not appear to help the appellants in any manner and, as such, this judgment is not burdened with discussions on the cited cases.

20) The learned counsel for the appellant had placed reliance on the case of *Jayanta Kumar Ghosh (supra)*. The said case supports the respondent more than it helps the appellants. In the said case, this Court had discussed in details the power of the Courts to grant bail in light of the provisions of section 437 Cr.P.C., section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, section 43(D) of the 1967 Act and section 20(8) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (since repealed), and the use of following expressions, viz., "*prima facie* case", "reasonable grounds" were examined. Thereupon, it was held in para 82 of the case of *Jayanta Kumar Ghosh & Ors. (supra)* as follows:-

> "***82***. *In short, thus, while the Special Court, constituted under NIA Act, does not suffer from the limitations, which the TADA Courts had by virtue of the provisions of Section 20(8), read with Section 20(9) thereof, the fact remains that the Special Court, not being a Court of Session or of the High Court, cannot exercise the powers of the Court of*

WWW.LIVELAW.IN

Session or High Court under Section 439 Code of Criminal Procedure. Hence, while dealing with the scheduled offences, covered by the proviso to Sub-section (5) of the Section 43D, Special Court, constituted under the NIA Act, would suffer not only from the limitations imposed by Clauses (i) and (ii) of Sub-section (1) of Section 473, but also by the proviso to Sub-section (5) of Section 43D of the UA(P) Act, 1967, wherever the provisions, contained in the proviso to Section 43D(5), would be applicable."

21) The learned counsel for the appellant had cited cases as indicated above. In light of the decision rendered by the Supreme Court of India in the case of *Zahoor Ahmad Shah Watali (supra)*, the cases cited by the learned counsel for the appellants would have no application.

i. The case of *In Re: Destruction of Public & Private Properties (supra)*, *Koshy Jacob (supra)* and *Kodungallur Film Society (supra)* were cited to project that despite the guidelines, the charge-sheet does not reveal that the National Investigating Agency and the State Police undertook the exercise as contemplated in the guidelines which was approved of by the Supreme Court and accordingly, there is no fact finding as to whether the appellants had any hand in the destruction of any property. In this regard, the Court is of the considered opinion that such a plea, if at all tenable, would be a matter to be considered for trial and cannot be considered at this stage in view of the express statutory bar to grant bail as indicated hereon before.

ii. The case of *Hitendra Vishnu Thakur (supra)* was cited to project that except for offence under UA(P) Act, the other accusations are common law and order problem. At this stage, the Court is merely examining the plea of bail and the appropriate jurisdiction of this Court has not been invoked to examine the nature of offence on merit. But the Court is only required to consider the issue of bail in light of the provisions of section 43D(5) of the 1967 Act. Hence at this stage the cited case does not help the appellants in any way.

iii. The case of *State of Kerala Vs. Raneef (supra)*, was cited to show that the appellants cannot be punished merely because he is suspected to be a member of

WWW.LIVELAW.IN

a banned organisation. This case is not attracted in the present case in hand because of the nature of material disclosed in the charge sheet, which is discussed herein before.

iv. The case of *Rojen Boro (supra)* was referred to. Before the Full Bench, reference was made to examine and decide two questions of law. The first question was whether a person accused of an offence punishable under Chapter IV and VI of the 1967 Act was entitled to a consideration for bail under section 43D(5) of the said Act once charge is framed against the accused for such offence. In the present case in hand, the appellants have not stated that charges have been framed by the learned Special Judge. Nonetheless, in light of the ratio laid down in the case of *Zahoor Ahmad Shah Watali (supra)*, the cited case would not help the appellants.

v. The cited cases of *Jayanta Kumar Ghosh* and *Zahoor Ahmad Shah Watali* have already been referred herein before. Both the said cases are also not found to help the appellants.

CONCLUSION:

22) Therefore, despite the well settled principle of "bail, not jail" as indicated at the outset, a conspectus of the discussions above is that the materials available with the charge-sheet disclose existence of materials against the appellants which constitute reasonable grounds for tentatively believing that the accusations made against the appellants of having committed offences of sections 120B, 143, 147, 148, 149, 326, 307, 333, 353, and 427 of the IPC and section 16 of the 1967 Act, punishable under Chapter VI of the 1967 Act are *prima facie* true and, as such, the appellants cannot be allowed to go on bail as the provisions of section 43D(5) disempowered the Court from releasing them on bail. As a result of the discussions above, this appeal fails. No interference is called for in respect of the impugned order dated 08.07.2020, passed by the learned Special Judge (NIA), Assam, Guwahati in Misc. Case No. 10/2020 arising out of RC-01/2020/NIA-GUW, thereby rejecting the prayer for grant of bail. This Court affirms the said order as there are sufficient material in

WWW.LIVELAW.IN

the charge-sheet against the appellants, as such, the Court does not find any infirmity in the finding returned by the learned Special Judge (NIA) that there are reasonable grounds for believing that the accusations against the appellant is *prima face* true. Accordingly, we pass the following –

O R D E R

23) For the above stated reasons, the instant appeal being devoid of any merit, the same is dismissed.

24) Be it mentioned that none of the observations expressed herein shall have any bearing on the trial of the case, which shall be decided on its own merit.

JUDGE **JUDGE**

Comparing Assistant

WWW.LIVELAW.IN