

GAHC010084002020



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

Case No. : Bail Appln. 1217/2020

1:AKHIL GOGOI

VERSUS

1:THE STATE OF ASSAM
REP. BY THE P.P.
ASSAM

Advocate for the Petitioner : MR. S BORTHAKUR
Advocate for the Respondent : PP
ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

16-07-2020

Heard Mr. K. N. Choudhury, learned Senior counsel assisted by Mr. S. Borthakur, learned counsel for the petitioner and Mr. K. Konwar, learned Additional Public Prosecutor, Assam for the State.

By this application under Section 439 CrPC, the petitioner, namely, Sri Akhil Gogoi has prayed for his bail in Chabua Police Station Case No. 307/2019 registered under Sections 436, 427 of the IPC with added Section 153A, 153B, of the IPC, read with Section 3 and 4 of the Prevention of Damages to Public Property Act, 1984, read with Section 15(1)(a) and 16 of the Unlawful Activities (Prevention) Act, in which he was shown arrested on 28.05.2020 and since then he is in custody.

Mr. Konwar, learned Additional PP has submitted the up-to-date status report of the Chabua P.S. Case No. 307/2019.

Mr. Choudhury, learned Senior counsel for the petitioner submitted that the petitioner while in custody suffered from Pandemic Covid-19 and is presently under medical treatment.

From the petition itself, it is submitted by Mr. Choudhury that while the petitioner was at Jorhat on 11.12.2019, and participated in the agitation in a peaceful protest, he was detained by Jorhat police on 12.12.2019 and was arrested on 13.12.2019 in connection with Jorhat P.S. Case No. 3498/2019 registered under Sections 120B, 145, 151, 153A, 157, 158, 283, 291 and 431 IPC in which he was granted bail by the learned CJM, Jorhat on 26.12.2019. Thereafter, the petitioner was arrested by the National Investigating Agency in NIA Case No. RC-13/2019/NIA-GUW under Sections 120B/124A/153A/153B of the IPC.

Mr. Choudhury, learned Senior counsel also brought to the notice of the Court that the petitioner was arrested in connection with Crime Branch P.S. Case No. 01/2019 under Sections 120B/122/123/143/147/148/149/150/152/153/326/ 333/353 of the IPC in which the FIR was lodged on 05.12.2019 and that another Bench of this Court by order dated 26.03.2020 passed in BA No. 834/2020 granted him on bail in the said Crime Branch Case.

It is also brought to the notice of the Court by Mr. Choudhury, learned Senior counsel that the petitioner was shown arrested on 28.03.2020 in Chabua P.S. Case No. 290/2019 registered under Sections 341/347/353/34 of the IPC with added Sections 153A/153B of the IPC read with Section 15(1)(a) of the Unlawful Activities (Prevention) Act, 1967 and a Bench of this Court by order dated 18.05.2020 passed in BA No. 930/2020 released him on bail.

Mr. Choudhury further brought to the notice of the Court that the petitioner was shown arrested on 22.04.2020 in Dibrugarh P.S. Case No. 2107/2019 under Sections

120B/143/147/148/149/341/448/336/353/436/435/ 427/294/379 of the IPC with added Section 153A/153B of the IPC read with Section 4 of the Prevention of Damages to Public Property Act, 1984 and Section 15 (1)/16(1)(b) of the Unlawful Activities (Prevention) Act and the Court by order dated 01.06.2020 passed in BA No. 958/2020 granted him bail.

Mr. Choudhury, learned Senior counsel for the petitioner submitted that as he had taken active part in the agitation pertaining to the Citizenship Amendment Bill (CAB) and Citizenship Amendment Act (CAA), he was arrested on 13.12.2019 and thereafter shown to have been arrested on subsequent dates in numbers of cases relating to the movement against the said CAB and CAA that were registered in different places of the State and thereby detained him in custody for long in those cases without any basis, violating his rights.

For the reasons above, Mr. Choudhury submitted that the petitioner should be released on bail in said Chabua P.S. Case No. 307/2019 forthwith.

From the up-to-date status report of said Chabua P.S. Case No. 307/2019 placed before the Court Mr. Konwar, learned Additional Public Prosecutor submitted that the agitation with regard to CAB in Chabua area was going on peacefully and the petitioner on his arrival at Chabua on 09.12.2019 around 6:00 PM gave a provocative and instigating lecture near railway station at Chabua. Because of such provocative and instigating lecture the miscreants being furious started vandalizing various Government establishments and Government Offices as a result of which not only the present Chabua P.S. Case but other Chabua P.S. cases have also been registered against the petitioner and other persons which are under investigation.

Mr. Konwar submitted that because of the petitioner's such provocative speech instigating the agitators, they on 12.12.2019 in the name of protest against the CAB and CAA came to the office of the Chabua Post Office and fully destroyed all the office files, records, furniture, computer system, generator, pass books, stamps, letters, Office and public properties etc., and burned down all those materials. Mr. Konwar submitted that these miscreants involved in the case are the supporters of KMSS of which the petitioner is the leader on which instigating speech the incident involved in the case has occurred and that police have already picked up few miscreants from the spot.

Mr. Konwar from the said status report also submitted that the statement of the

witnesses acquainted with the incident were already recorded under Sections 161 and 164 CrPC and during investigation Mobile Interception of the petitioner and several other suspects during CAB protest have been duly collected from the Office of the Superintendent of Police, Special Branch, Kahilipara, Guwahati which clearly indicates of the involvement of the petitioner by his provocative speech for vandalizing, attack on security personnel, set ablaze of Government establishment like Post Office, Banks Branch, Circle Office in the present case, Railway Station and the house of the local MLA in a pre planned manner with conspiracy, led by the petitioner, taking the advantage of the common innocent people.

Mr. Konwar, learned Additional Public Prosecutor further submitted that after the detention of the petitioner and his arrest the neutral witnesses acquainted with the facts of the case came forward co-operated with the investigation and deposed against the petitioner with regard to his pre judicial intention and for that the custody of the petitioner is required for necessary and fair investigation of the case.

Mr. Konwar submitted that this High Court has already declared "all kinds of Bandh call given by various organizations as illegal and that all the liabilities of Bandh affected would be vested upon the organizers". Mr. Konwar submitted that the petitioner being the leader of the KMSS of Assam is fully responsible in all the illegal activities that took place in Chabua during the Bandh call given by the said Samittee and reiterated that all such vandalism including demolition/destruction and burning of Government properties were done at the instance of the petitioner due to his provocative and instigating speech.

Heard the learned counsel for the parties, considered the bail orders passed by other Benches of this Court granting bail to the petitioner wherein he was arrested for his activities pertaining to the protest against the CAB and CAA.

It is to be noted herein that the matter relating to amendment of the Citizenship Act is presently pending before the Hon'ble Apex Court of India.

We have also noticed that the petitioner while seeking bail in Crime Branch P.S. Case No. 01/2019 made a clear statement that during the pendency of the trial of the case he will not indulge in activities or protest which might result in violent incident or damage to public property and considering such statement of the petitioner and other circumventing factors, he

was released on bail with heavy surety by the Court by its order dated 26.03.2020 passed in BA No. 834/2020. In the said order dated 26.03.2020, the Court also observed that the petitioner at any point of time during the investigation and trial intimidates or influences or approaches any witness of the incident, the prosecution would be at liberty to seek cancellation of bail and that the petitioner shall not delay the process of investigation or trial.

It is also noticed that for the similar offences under Sections 147/148/336/427/153A/153B of the IPC read with Section 4 of the Prevention of the Damages to Public Property Act and 15(1)/16(1) of the Unlawful Activities (Prevention) Act against the petitioner for his participation in the movement against CAB and CAA, the Court has already granted bail to him by orders dated 18.05.2020 in BA No. 930/2020 and 01.06.2020 in BA No. 958/2020 in Chabua P.S. Case No. 290/2019 and Dibrugarh P.S. Case No. 2107/2019 respectively, noted above.

After considering the entire aspect of the matter, the Court is of the view that the petitioner namely, Sri Akhil Gogoi shall not be required for his further custodial interrogation to investigate the said Chabua P.S. Case No. 307/2019 and therefore, this bail application of the petitioner is accepted.

Accordingly, the petitioner, namely, **Sri Akhil Gogoi** shall be released on bail in said Chabua Police Station Case No. 307/2019 on furnishing bail bond of Rs. 50,000/- with two local sureties of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Dibrugarh on conditions that

- (i) Pending investigation and trial of said Chabua P.S. Case No. 307/2019, the petitioner shall not indulge in any activities or protest, shall not give any provocative or instigating speech/lecture, shall not communicate provocative or instigating messages in any platform, medial etc., that results in blocking of any public or private road, rail etc., affecting/hampering the commuters in their peaceful movement and in violent incident or damage to the public property thereby threatens peace, tranquility and harmony of the public of the society;
- (ii) Petitioner shall appear before the Investigating Officer of said Chabua P.S. Case No. 307/2019 as and when he is required for necessary investigation of

said Case;

- (iii) Petitioner shall not leave the territorial jurisdiction of the Chabua police station, without obtaining prior written permission from the concerned Investigating Officer of the case;
- (iv) Petitioner shall not hamper with the investigation, or tamper with the evidence of the case and
- (v) Petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer.

Failing any of the grounds noted above, the bail granted to the petitioner, named above, in the aforesaid Chabua Police Station Case shall stand automatically vacated.

Bail application accordingly stands allowed.

JUDGE

Comparing Assistant