
(2022) 01 GAU CK 0007
In the Gauhati High Court
Case No : Bail Application No. 3436 Of 2021

Mozibar Rahman @ Gunbar And Anr

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 03-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 121, 121A, 122, 123, 420, 489A
Code Of Criminal Procedure, 1973 — Section 173, 173(8), 439
Arms Act, 1959 — Section 25(1A)
Unlawful Activities (Prevention) Act, 1967 — Section 18, 18B, 19, 20, 23
National Investigation Agency Act, 2008 — Section 22

Citation : (2022) 01 GAU CK 0007

Hon'ble Judges : Hitesh Kumar Sarma, J

Bench : Single Bench

Advocate : M Khan

Final Decision : Disposed Of

Judgement

Heard Mr. M Khan, learned counsel for the petitioners. Also heard Mr. M Phukan, learned Public Prosecutor, appearing for the State respondent.

This is an application, filed under Section 439 of the Cr.PC. seeking bail of the accused-petitioners, namely, 1. Mozibar Rahman @ Gunbar and 2.

Fayzar Ali, in connection with Gauripur Police Station Case No. 607/2021 registered under Sections 120(B)/420/489(A) of the IPC read with Section

25(1-A) of the Arms Act and added Sections 121/121-A/122/123 of the IPC read with Sections 18/18-B/19/20/23 of the U.A.(P) Act.

The fact of the case, as appears from the FIR, is that the accused Mozibar Rahman @ Gunbar was found keeping fire arms illegally on search of his

house on 21.04.2021. The search was made on the basis of secret information received by Investigating Agency. Four handmade pistols and some

fake Indian currency notes amounting to Rs. 1,02,000/- and suspected duplicate gold weighing about 200 grams were seized from the accused

Mozibar Rahman @ Gunbar. As per the statement in the FIR, the accused Mozibar Rahman @ Gunbar has been involved in dealing with handmade

pistols and fake Indian currency notes as well as duplicate gold since long.

During the course of investigation, both the petitioners were arrested and since the date of their arrest, the petitioner No. 1 Mozibar Rahman @

Gunbar has been in custody for 256 days and the petitioner No. 2 Fayzar Ali has been in custody for 253 days.

Perused the case diary produced before this Court.

On perusal of the case diary, it is found that the petitioners are suspected to be involved with foreign extremistsâ?? organization attempting to

destabilize India.

Learned counsel for the petitioners has submitted that part charge-sheet has been laid against the petitioners under Sections 120(B)/420/489(A) of the

IPC read with Section 25(1-A) of the Arms Act. He has further submitted, referring to the statement in the charge-sheet itself that final charge-sheet

will be laid after getting prosecution sanction from the Home Secretary (Political) Department, Government of Assam under Section 173(8) of the

Cr.PC.

Learned counsel for the petitioners has also submitted that on expiry of 90 days, in custody, an application was made by the petitioners seeking bail

which was rejected by the learned court below.

I have perused the orders dated 21.10.2021 and 09.11.2021 passed by the learned Special Judge, Dhubri in connection with the bail applications of the

petitioners. In the order dated 21.10.2021, the learned Special Judge has observed that preliminary charge-sheet has been laid against the accused-

petitioners in the instant case and final charge-sheet will be submitted after receiving of prosecution sanction. However, on perusal of the copy of the

charge-sheet, made available to this Court, it is found that the charge-sheet was not a part charge-sheet and rather this was a report in full form as

required under Section 173 of the Cr.PC. The last para of the charge-sheet indicates that after receiving prosecution sanction, the Investigating

Agency will file a report under Section 173(8) of the Cr.PC meaning thereby that if there is additional evidence collected then further report will be

filed. From that point of view, whatever report is filed by the Police under Section 173 of the Cr.PC, as indicated above, appears to be the report in full

form, which is generally termed as "Charge-sheet". This Court is not sitting on appeal in respect of the order, dated 28.10.2021 passed by the

learned Special Judge, rather, the above observation is made same being considered relevant in the context of the order that is being passed now.

This Court has also taken note of the order, dated 09.11.2021 passed by the learned Special Judge wherein it has been categorically mentioned that

since preliminary charge-sheet has already been filed and as the case is required to be tried by the said court being NIA Court, the accused persons

did not deserve bail, at that stage.

I have peeped into the provisions of the NIA Act, 2008 and particularly Section 22 thereof. Section 22 of the said Act is reproduced herein below:-

"22. Power of State Government to constitute Special Courts."

(1) The State Government may constitute one or more Special Courts for the trial of offences under any or all the enactments specified in the

Schedule.

(2) The provisions of this Chapter shall apply to the Special Courts constituted by the State Government under sub-section (1) and shall

have effect subject to the following modifications, namely:

(i) references to "Central Government" in sections 11 and 15 shall be construed as references to State Government;

(ii) reference to "Agency" in sub-section (1) of section 13 shall be construed as a reference to the "investigation agency of the State

Government";

(iii) reference to "Attorney-General for India" in sub-section (3) of section 13 shall be construed as reference to "Advocate-General

of the State".

(3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted by the State Government under sub-

section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court

of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided

under this Chapter.

(4) On and from the date when the Special Court is constituted by the State Government the trial of any offence investigated by the State

Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to

that Court on the date on which it is constituted.â??

So it appears from the provisions of Section 22 that for trial of schedule offences under any enactments, the State Government shall constitute Special

Courts.

The learned Public Prosecutor has referred to the letter written by the Investigating Officer to the Government of Assam in the Department of Home

seeking sanction for prosecution of the accused persons under the schedule offences under the Unlawful Activities Prevention Act, particularly

Sections 18/18-B/19/20/23 thereof.

The sanction was sought for vide letter dated 21.12.2021. The accused persons were arrested on 23.04.2021 and 26.04.2021 respectively and the

aforesaid Sections under the Unlawful Activities (Prevention) Act were added in the instant case on 11.05.2021. So it appears from the materials,

indicated above, that the application seeking sanction was moved before the Government after about 7 months from the date of adding the aforesaid

provisions under the Unlawful Activities (Prevention) Act and the sanction is still not forthcoming.

In that view of the matter, the sanction has not been accorded yet for prosecution under the Unlawful Activities (Prevention) Act and no charge-sheet

to that effect has therefore, been laid. The present position in the case is that the accused-petitioners are charge-sheeted under Sections

120(B)/420/489(A) of the IPC read with Section 25(1-A) of the Arms Act although the Sections 121/121-A/122/123 of the IPC. Sections 18/18-

B/19/20/23 of the Unlawful Activities (Prevention) Act has been added yet there is no charge-sheet laid for the offence punishable under the said

provisions of Unlawful Activities (Prevention) Act till date even after 256 and 253 days of detention of the petitioners in custody and after adding the

provisions of the Unlawful Activities (Prevention) Act on 11.05.2021.

In view of the above discussions and observations made herein above, this Court is of the view that the learned court below shall consider the bail

application of the petitioners on merits and materials available before it, if an application is made seeking bail. Whatever observation is made above in

this order is for the specific purpose of disposal of this application only. However, in respect of bail application, if made, the learned court below shall

be at liberty to pass appropriate order applying its own wisdom

With the above observations and directions, this petition stands disposed of.