

(2013) 05 GAU CK 0001

In the Gauhati High Court

Case No : Criminal Miscellaneous Case No. 289 of 2013 in Cri. Appeal No. 79 of 2012

Nighthougujam Bomi Singh

APPELLANT

Vs

National Investigation Agency

RESPONDENT

Date of Decision : 24-05-2013

Acts Referred:

Citation : (2013) 3 GLD 659 : (2013) 4 GLT 632

Hon'ble Judges : P.K. Musahary, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : M.G. Singh, for the Appellant; D.K. Das, Standing Counsel NIA, for the Respondent

Final Decision : Disposed Off

Judgement

Iqbal Ahmed Ansari, J.—This appeal, made u/s 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as "the NIA Act"), has arisen out of an order, dated 02.05.2012, passed in Misc. Case No. 04/2012, arising out of Special NIA Case No. 01/2010, under Sections 120B and 121A IPC read with Sections 17, 18, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967, by the learned Special Judge, Guwahati, rejecting the present appellant's prayer for bail. We have heard Mr. M.G. Singh, learned counsel, appearing for the appellant, and Mr. D.K. Das, learned Standing counsel, NIA.

2. It is submitted, on behalf of the NIA, that having collected the materials against the appellant, the NIA has filed a charge-sheet and the learned Special Court has already framed charges under Sections 120B and 121A read with Sections 17, 18, 19, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967.

3. The basic ground for seeking bail by the appellant has been his illness inasmuch as the appellant has been suffering from Hepatitis C infection coupled with other connected infections, liver problem, HIV status and, presently, ART second line treatment and he has also undergone EVL operation in order to

prevent bursting of Esophageal varice.

4. Having taken into account the state of the appellant's illness, a Division Bench of this Court, while dealing with the present appeal, allowed the appellant to go, on interim bail, subject to the conditions imposed by the Court. The relevant observations, made by the Division Bench in its order, dated 19.06.2012, and the directions given therein, are re-produced below:

12. Noticeably, the NIA had not disputed the illness form which the appellant asserts that he is suffering from. The medical documents accompanying the memorandum of appeal seek to demonstrate that he is presently a prey to multiple virulent diseases requiring intensive and constant medical attention. The medical certificates laid with this Court exhibit that he is suffering from intricate diseases of liver and heard together with HIV infection and thrombocytopenia, hypoalbumina and has been advised complete bed rest, free from stress and strain. That he had been subjected to EVL for Esophageal varices grade 3 is also evident. Though, the NIA in its affidavit has maintained that the appellant is being provided with the necessary medical treatment and that the Doctors have not advised that he needs to be shifted or be lodged in a homely environment no written opinion to the effect has been produced before us. On a cumulative consideration of the ailments from which he is suffering and the extensive and rigorous treatments which he is undergoing on day to day basis, we are inclined to sustain his plea albeit for a limited duration of time to facilitate his stay in a more comfortable, friendly and soothing environment, amongst his family members and relatives as desired by him. This draught of limited liberty, we construe, accords with his right to life under the Constitution. On being queried by us, the learned Standing Counsel, NIA could not provide us with any material to anticipate and/or opine that in this macabre state of health, if the appellant is allowed to be on interim bail for a limited period of time he would abuse the liberty and would either intimidate or influence the witness or flee from justice.

13. In the above view of the matter, in the singular facts and circumstances of the case and on an exclusive consideration of the present health condition of the appellant, we feel inclined to grant interim bail to him presently for a period of one month from today. This liberty, however, would be subject to the following conditions:

- i) He would be released on interim bail on the production of two sureties of an amount of Rs. 50,000/- each, to the satisfaction of the learned trial Court.
- ii) The appellant would make himself available to the NIA as well as the learned trial Court as and when required.
- iii) The appellant would not move out of Imphal without the prior permission of the learned trial Court. The learned trial Court in the event of such a request made would not pass any order to that effect without hearing the NIA.
- iv) The appellant would not make any endeavour either directly or indirectly to

contract or intimidate any witness or member of the UNLF during the period of his interim bail.

v) The appellant would cause an information to be laid with the jurisdictional police station at Imphal and also the Court of learned Chief Judicial Magistrate, Imphal about his whereabouts on daily basis.

vi) The appellant would surrender in the Court of the learned Chief Judicial Magistrate, Imphal on 18.07.2012 without fail. The Chief Judicial Magistrate would, on his surrender, pass appropriate order(s) to restore him in custody.

14. It is made clear that any breach of the conditions aforementioned would be viewed very seriously and would entail cancellation of the order forthwith.

5. The question as to whether a person, when accused of committing an offence punishable under the provisions of the Unlawful Activities (Prevention) Act, 1967, can be allowed to go on bail, despite the limitations imposed on the Court by the proviso to Section 43D(5) of the NIA Act, fell for consideration before a Division Bench of this Court, in the case of the National Investigation Agency Vs. Redaul Hussain Khan, wherein it was pointed out by one of us (I.A. Ansari, J.), speaking for the Court, at paragraph 4, as under:

4. The concern for security of the State has, therefore, made the State make more and more stringent laws. Lest the State also does not become as insensitive as a terrorist, all the acts of the State and the laws, made by the State, must be tested and interpreted on the touchstone of human rights. A successful State administers its laws with meaning and effect. A person, accused of an offence, must be brought to book in accordance with law. In order however, to be brought to book, the accused must be allowed to survive. The security concern of the State cannot, therefore, be limitless and be allowed to put such restrictions on the liberty of the accused as would deny to him his right of not to be deprived of his life except as the law prescribes. Consequently, the law, in such cases, has to be interpreted in a manner, which would make the law just fair and reasonable. The present appeal throws UP one of such Questions and we are invited to decide amongst others, a question as to whether a person can be allowed to go on bail on the ground of his sickness, if he is accused of an offence, which, under a given penal provision, does not entitle him the right to go on, bail? If so, whether it would be wise for the Court to ignore all such conditions, which are, otherwise, required to be satisfied before the Court allows an accused person to go on bail? Thus, the Court is required to interpret the restrictive conditions imposed on civil liberty of an accused in a manner, which would advance the legislative intent. While interpreting the law and applying the same to the facts of a given case, the Court may have to exercise its discretion. Should, therefore, the Court's discretion be guided by set principles or be left to the Court to be applied judiciously as would advance not only the legislative intent, but also the cause of justice.

(Emphasis supplied)

6. In Redaul Hussain Khan (*supra*), the Court dealt with the question as to whether an accused can be released on bail on the ground of his sickness, if the Special Court has reason to form an opinion that there are reasonable grounds for believing that the accusation against the accused, as regards an offence punishable under Chapter IV and VI of the UA(P) Act, 1967, is *prima facie* true, or when the Special Court has reasons to believe that the accused has been guilty of an offence punishable with death or imprisonment for life or the offence is a cognizable offence and the accused had been previously convicted of an offence punishable with death or imprisonment for life or if the accused had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more, but not less than three years?

7. Thereafter, having analysed the provisions of the NIA Act, 2008 and the provisions, embodied in the Unlawful Activities (Prevention) Act, 1967, read with the provisions of the Code of Criminal Procedure, the Court concluded at para 79, thus:

79. There is, therefore, no manner of doubt, in our mind, that notwithstanding the limitations, which have been imposed by the proviso to Section 43D(5), it would still remain open for a Special Court, under the NIA Act, to release an accused on bail, on the ground of sickness, by taking resort to the powers conferred on it by the first proviso to Section 437(1) Cr.P.C. However, while considering release of a person on bail on the ground of sickness, the materials, appearing against him, would be relevant inasmuch as the Court may, in a given case, allow an accused to remain on bail even if his sickness is not of the degree, which would threaten his life provided that the Court is assured of the availability of the accused for further investigation or trial coupled with the reasonable assurance that the accused would, if granted bail, not abuse his liberty. When, however, in the cases of serious nature, there is likelihood of the accused fleeing away from justice or there is reasonable possibility of the accused intimidating witnesses, threatening them and thereby adversely affecting the investigation or trial, the Court would have to be cautious in releasing the accused on bail on the ground of sickness unless the Court forms the view that it is impossible for the accused to receive requisite medical treatment, while remaining in custody. The ground of sickness can mandatorily become a ground for releasing an accused on bail, where the choice is really between protecting the investigation or trial, on the one hand, to advance the course of justice and protecting the life of the accused on the other, even where there remains a reasonable element of apprehension that the accused might not remain available for further investigation or trial and similar such other considerations.

(Emphasis is added)

8. We are fully in agreement with the above observations made, in Redaul Hussain Khan (*supra*), that the law permits the Court to allow a person to be released on bail even if his case falls, u/s 43D(5), on the ground that the accused person is sick subject to such conditions as have been indicated above.

9. In the present case, as has already been observed by a Division Bench of this Court, in its order, dated 19.06.2012, the appellant needs to be allowed to go on bail subject to the conditions, which had been imposed by the Court by the said order. Since thereafter, the appellant has remained, with the help of various interim orders, passed, in this appeal, on bail and we are of the view that in the attending facts and circumstances of the present case, this appeal shall succeed inasmuch as the appellant needs to be allowed to remain on the bail, which has been granted by this Court, by its order, dated 19.06.2012, subject to the conditions, which have been mentioned hereinabove.

10. Because of what have been discussed and pointed out above, we hereby make the interim bail absolute for a further period of six months from today subject to the conditions, which have already been imposed by this Court, while granting interim bail, on 19.06.2012, in favour of the appellant. With the above observations and directions, this appeal shall stand disposed of.