

GAHC010189562023



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

Case No. : Crl.A./340/2023

SANJIB TALUKDAR
S/O UTTAM TALUKDAR,
VILL.- KARARA, UNDER BAIHATA CHARIALI P.S., IN THE DIST. OF
KAMRUP (RURAL), ASSAM.

VERSUS

NATIONAL INVESTIGATION AGENCY AND ANR.
REP. BY THE SC, NIA, GAUHATI HIGH COURT, GUWAHATI, ASSAM.

2:MUKUT CH. DEKA
S/O LATE SABAD CH. DEKA

THE THEN S.I. OF POLICE GEETANAGAR P.S.
GUWAHATI
DIST.- KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR Z KAMAR, MR. M KALITA,MR S J CHOUDHURY,MR. U
CHOUDHURY,MR D NANDI

Advocate for the Respondent : SC, NIA, B. BHUYAN,PP, ASSAM(R-2)

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Hearing : 23.07.2024.

Date of Judgment : 10.04.2025

JUDGMENT AND ORDER (CAV)

(M. R. Pathak, J.)

Heard Mr. Ziaur Kamar, learned Senior Advocate, assisted by Mr. Debashis Nandi, learned counsel for the appellant and Mr. Dilip Das, learned Senior Advocate and Senior Standing Counsel NIA, assisted by Mr. D. Bharadwaj, learned counsel for the respondent No. 1. Also heard Ms. Bornali Bhuyan, learned Senior Advocate and Additional Public Prosecutor, Assam for the Respondent No. 2.

2) The appellant stated that he is a young boy aged about 30 years with brilliant academic carrier pursuing M.Phil. in Botany at Gauhati University and has also completed the course work. He also represented India by participating in the BRICS, 2016 as an NSS Volunteer under the Ministry of Youth Affairs, Government of India and made several paper publications representing the State and the Country on many occasions.

3) According to him, he is no way involved in Geetanagar Police Station Case No. 210/2019 under Sections 325/326/307/121 IPC read with Section 3/5 of the Explosive Substance Act and Sections 10/13/16/20 of the Unlawful Activities (Prevention) Act, 1967, a police case that relates to throwing of Grenade towards a police party by some miscreants around 07:40 pm on 15.05.2019 while they were checking vehicles in front of Central Mall, at the R G Baruah Road, Guwahati, in which about 12 persons sustained injuries.

4) In said FIR dated 16.05.2019 it was also alleged that United Liberation Front of Assam (Swadhin) [in short, ULFA (Independent) or ULFA (I)], an extremist group caused the incident,

whereby they tried to kill peace loving people. In said Geetanagar P S Case No. 210/2019 the appellant was arrested on 27.05.2019 and is in custody till date.

5) The Government of India by order dated 24.06.2019 handed over the investigation of said Geetanagar P.S. Case to the National Investigating Agency (NIA, in short) and on 26.06.2019 it was re-registered and numbered as NIA Case No. RC.04/2019/NIA/GUW. On completion of the investigation of said Case, NIA submitted the charge-sheet before the Special Judge, NIA, Assam, Guwahati vide C.S. No. 03/2019 dated 11.11.2019 against 10 (ten) numbers of accused persons in the case under different Sections of law, including the appellant under Sections 120B/121/121A IPC read with Sections 18/38/39 of the Unlawful Activities (Prevention) Act, 1967.

6) After filing of the charge sheet in said NIA Case No. RC.04/2019/NIA/GUW it was registered and numbered as Special NIA Case No. 02/2019 before the Court of learned Special Judge, NIA, Assam, Guwahati in which the appellant is arrayed as Accused No. 7.

7) After submission of charge sheet by the NIA against him, the appellant preferred a bail application, which was rejected by the NIA Court on 30.11.2019.

8) Against said rejection of his bail dated 30.11.2019 in said Special NIA Case No. 02/2019, the appellant preferred an appeal being Criminal Appeal No. 67/2020 and it was dismissed by a Co-ordinate Bench of this Court on 27.12.2022.

9) In the meanwhile, during pendency of said Criminal Appeal No. 67/2020, learned Special Judge, NIA, Assam, Guwahati in said Special NIA Case No. 02/2019 on 03.02.2022 framed charge under Sections 121A IPC read with Sections 18/38/39 of the Unlawful Activities (Prevention) Act, 1967 against the appellant.

10) After rejection of his bail on 27.12.2022, the appellant again preferred a bail application before the learned Special Judge, NIA, Assam Guwahati in said Special NIA Case No. 02/2019 being Misc. (NIA) Case No. 25/2023. After hearing the learned Special Judge, NIA at Guwahati by its order dated 25.07.2023 passed in said Misc. (NIA) Case No. 25/2023 rejected the bail prayer of the accused Sri Sanjib Talukdar in said Special NIA Case No. 02/2019. Hence this appeal by the said accused as appellant under section 21(1) and (4) of the National Investigation Agency Act, 2008.

11) The appellant contended that while rejecting his bail in Criminal Appeal No. 67/2020 by

judgment and order dated 27.12.2022, passed earlier, the Co-ordinate Bench at Para 88 of the said judgment, observed that — *“In the present case, we have noted that the appellant Sanjib Talukdar has been in custody for more than 3½ years. Though we have rejected his bail application on the ground that the accusation against him appears to be prima facie true, if there is any further delay in concluding the trial without any substantive progress, we are of the view that he will have a legitimate claim to be released on bail because of prolonged incarceration.”*

12) The appellant stated that considering the principle enunciated in the case of *Union of India Vs. K. A. Nazeed*, reported in (2021) 3 SCC 712, the Co-ordinate Bench in its said judgment and order dated 27.12.2022 at Para 89 opined that if the detention of the petitioner continues beyond four years without any substantial progress in the trial with the unlikelihood of the trial being concluded in near future, he can be released on bail.

13) It is also placed before the Court that in Para 91 of the said judgment and order dated 27.12.2022 the Co-ordinate Bench observed that — *“In the present case, we are of the prima facie view that the appellant (Sanjib Talukdar) does not appear to be a hardcore under trial and his role is marginal in the bomb blast incident on 15.05.2019 and as such his bail can be considered even before completing five years of detention, if he has completed four years of detention and if there is no likelihood of trial being completed in near future.”*

14) It is stated that though by the said judgment and order dated 27.12.2022 the Co-ordinate Bench dismissed his said Criminal Appeal No. 67/2020, but in the said judgment itself the Court at Paras 92 and 94, granted liberty to the appellant to approach the Court again on completion of four years of detention, if in the meantime there is no substantial progress in the trial and if there is no possibility of concluding the trial in near future for seeking release on bail in the light of the observations made in the case of *K. A. Najeeb (supra)*.”

15) On completion of his four years in jail, the appellant on 13.06.2023 filed a petition under Section 437 CrPC vide Petition No. 345 before the Court of learned Special Judge, NIA, Assam, Guwahati for his regular bail in said Special NIA Case No. 02/2019, being Misc. (NIA) Case No. 25/2023, stating that there was no substantial progress in trial of the said Special NIA Case No. 02/2019 and that there is no possibility to conclude the trial of the said NIA case in the near future as out of 177 numbers cited as prosecution witnesses in the charge-sheet of the case, only 15 numbers of prosecution witnesses were examined and that about 237 numbers of documents

are to be exhibited by the prosecution and that, the prosecution witnesses Nos. 7 to 13 did not state anything implicating the appellant in any manner pertaining to the incident of the case.

16) As the learned Special Judge, NIA, Assam, Guwahati by order dated 25.07.2023 passed in Misc. (NIA) Case No. 25/2023 rejecting his bail prayer holding that it is the exclusive preserve of the Constitutional Courts to grant bail in a case involving the statutory restrictions and provisions like Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 and that such power cannot be exercised by the Special Court, being aggrieved, the appellant has preferred this appeal.

17) Mr. Kamar, learned Senior Counsel submitted that the incident occurred on 15.05.2019 and the FIR was registered on 16.05.2019 as Geetangar P.S. Case No. 210/2019 in which the petitioner was arrested on 27.05.2019 and is in custody since then. Charge sheet in the case was filed by NIA on 11.11.2019 against 10 accused persons including the present appellant showing two persons as absconders.

18) Mr. Kamar, learned Senior counsel placed before the Court that the appellant is a meritorious student completed his M.Sc. Degree, pursuing M.Phil, was preparing for his IFS Exam, was a best debator in Science Debate competition, was selected as a Project Scientist in Assam Science Technology and Environment Council, participated in BRICS, 2016 representing India as an NSS Volunteers under the Government of India, Ministry of Youth Affairs and Sports and does not have any criminal antecedent. But for the first time he has been implicated in the present case. Mr. Kamar stated that NIA also failed to found any incriminating material against the appellant except alleging that he has provided logistic support to the cadres of ULFA (I) by providing transportation to ULFA (I) Cadre. Mr. Kamar also stated that NIA has only alleged that the appellant has actively participated in the reconnaissance of the targets with the ULFA (I) Cadre and that he actively associated with the conspiracy to commit terrorist acts in pursuance with the goal of ULFA(I) with other co-accused, but NIA could not show and/or place any materials of such involvement of the appellant with any terrorist/extremist group.

19) Mr. Kamar, learned Senior counsel for the appellant submitted that though charge under Section 121A IPC has been framed against the appellant by the Trial Court, but charge under Section 121 IPC has not been framed against him and in absence of charge under Section 121 IPC, charge under Section 121 A IPC cannot be framed. Mr. Kamar further stated that though in the charge sheet it is stated that a communication was made between the appellant and the

protected witness X, but it was only once on 30.04.2019 and the NIA failed to produce any transcript to show that talks actually took place between the appellant and the accused Papu Koch (A-1) or accused Pranmay Rajguru (A-3).

20) Though the respondents NIA annexed certain photographs of the appellant Mr. Kamar stated that those cannot be accepted as standard of proof of its authenticity and accuracy that are to be stringent then the documentary evidences which should contain proper date, month and year of the photographs. Mr. Kamar also stated that the appellant is not in good health and is under medication and he being an youth with brilliant and meritorious student, should be considered for bail. Mr. Kamar further stated that Court may impose any stringent condition while considering the case of the appellant for his bail in said Special NIA Case No. 02/2019.

21) As the appellant is in custody since 27.05.2019 and out of 177 named prosecution witnesses in the charge-sheet, recording of evidence of hardly a few of prosecution witnesses is complete, where the prosecution is yet to exhibit more than 230 numbers of documents, Mr. Kamar, learned Senior Counsel submitted that the appellant's right to have a speedy trial has been infringed and thereby violated the right guaranteed under Article 21 of the Constitution.

22) Mr. Z. Kamar, learned Senior Counsel in support of his argument and in favour of the appellant for his bail relied on the following decisions of the Hon'ble Supreme Court – (i) *Union of India Vs. K. A. Nazeem* reported in (2021) 3 SCC 713, (ii) *Shoma Kanti Sen Vs. The State of Maharashtra and another* reported in (2024) 6 SCC 591, (iii) *Javed Gulam Nabi Shaikh Vs. The State of Maharashtra and another* reported in 2024 SCC OnLine SC 1693. Mr. Kamar also placed a judgment and order dated 11.01.2024 passed by a Co-ordinate Bench of this Court in Crl. A. No. 275/2023 by which a co-accused of said Special NIA Case No. 02/2019 namely Indra Mohan Bora was granted bail.

23) Mr. Dilip Das, learned Senior counsel for the NIA, placed before the Court that the appellant belongs to banned ULFA cadre and was in the jungle with accused No. 1 Papu Koch Bokaliial @ Bijay Asom @ Anvi @ Rajni, a hard core ULFA (I) cadre. Said Papu Koch was dispatched from the ULFA (I) camp in Myanmar by the ULFA (I) leaders to carry out the terrorist acts in the State of Assam in the month of April, 2019 and he was instructed to take the help of other co-accused of the case including the appellant Sanjib Talukdar and to proceed to Guwahati for carrying out the terrorist acts.

24) Mr. Das, learned Senior counsel also placed before the Court that on reaching Guwahati, said Papu Koch was instructed to select targets for terrorist attacks and for the said purpose accused Papu Koch took the help of the appellant in scouting for possible targets in Guwahati city.

25) From the charge-sheet of the case, Mr. Das, learned senior counsel for the NIA submitted that on 26th and 27th of May, 2018, the appellant and said Papu Koch visited the sites. Both of them had telephonic conversation on 25.04.2019 from Sivasagar, on 27.04.2019 from Nagaon and on the same date from Guwahati on four occasions. Further, on 30.04.2019 from Guwahati they had communication with each other over phone on eight occasions from 11:15 am to 9:30 pm.

26) Mr. Das, also stated that the protected witness in his statement under Section 164 CrPC stated about the involvement of the appellant in the case and also stated that the appellant was involved in bringing the accused Papu Koch to Guwahati.

27) Mr. Das stated that the incident occurred on 15.05.2019 and there were sufficient communication between the appellant and the accused Papu Koch prior to the incident which indicates his involvement in the case.

28) Mr. Das stated that the appellant may not be present at the time of executing the crime or may not have accompanied the other accused persons in executing the crime but the appellant was available with the accused Papu Koch prior to the incident and also thereafter and involved in the conspiracy. Mr. Das further stated that even the other accused persons of the case who accompanied the accused Papu Koch had telephonic conversations with the appellant before and after the incident and the appellant involvement in the case was as one of the over ground worker of the ULFA (I) who is an active supporter and activist of the said banned organization who maintained his link with other ULFA cadres carrying out subversive and antinational activities including terrorist acts who provided logistic support to the ULFA (I) cadres providing transportation to them and actively participated in the reconnaissance of the targets with ULFA (I) cadre. Being actively associated with the ULFA (I) cadre he is also involved with the conspiracy to commit terrorist acts in pursuance of the goals of the ULFA (I) with the other co-accused. Photograph of the appellant was found along with the accused Papu Koch Bokaliel in operational activities and further with said Papu Koch and other ULFA (I) members in the jungle indicating

that he was roaming with the ULFA members. He was also found in photographs in the uniform of ULFA (I) with fire arms in standing position aiming at something through the said fire arms indicating that he got training with ULFA (I) cadres in handling arms. Moreover, through a specific Facebook URL address the appellant was found communicating with other accused persons and other ULFA (I) cadres. Mr. Das submitted that during investigation it was also found that the appellant was using specific Facebook account as well as Gmail account to communicate with other ULFA members.

29) Mr. Das learned Senior counsel for the NIA submitted that if at this stage the appellant is released on bail, then fair trial of the case may not be possible, since there will be threat perception from the appellant's side. Mr. Das also stated that if the appellant is released on bail there is every likelihood that he will influence and/or threat the key witnesses of the case which will hamper the process of justice. Mr. Das also submitted that in said Special NIA Case No. 02/2019 trial is already under way and numbers of prosecution witnesses have already been examined. Therefore, mere delay in trial pertaining to the nature of offences involved in the case cannot be a ground to grant bail to the appellant. As such, Mr. Das, learned Senior Counsel for the NIA submitted that the bail of the appellant in said Special NIA Case No. 02/2019 should be rejected as the trial of said Special NIA Case is in progress.

30) Ms. Bornali Bhuyan, learned Senior Counsel and Additional Public Prosecutor, on being enquired by the Court on instruction submitted that the appellant is a known case of Hypothyroidism with Generalized Anxiety Disorder and he is on regular medication. On instruction Ms. Bhuyan, learned Senior Counsel also stated that the appellant was admitted in the Gauhati Medical College Hospital Medicine Department as he suffered from fever with cold with malaise and was diagnosed as fibromyalgia with Hyperkalemia and was released from hospital within three days as he was cured on medication. The appellant was found to be clinically stable and his vital parameters were within normal limit.

31) Heard the learned counsel for the parties and considered the decisions of the Hon'ble Apex Court placed on behalf of the appellant. The Hon'ble Supreme Court in the case of *National Investigating Agency Vs. Zahoor Ahmad Shah Watali* reported in (2019) 5 SCC 1 have held that *while considering bail totality of material gathered by investigating agency and presented along with report and including case diary is required to be reckoned and not by analyzing individual pieces of evidence or circumstance*. In the said judgment the Hon'ble Supreme Court have further

held that *in a case of bail, it is for the Court considering application for bail to assess material/evidence presented by Investigating Agency along with report under Section 173 of CrPC in its entirety, to form its opinion as to whether there are reasonable grounds for believing that accusation against the named accused is prima facie true or otherwise.*

32) In the case in hand it is seen in the order dated 27.12.2022 passed by the Co-ordinate Bench in CrI. A. No. 67/2020 while rejecting the bail of the appellant in Special NIA Case No. 02/2019 prima facie found that the appellant does not appear to be a hardcore under trial and his role is marginal in the bomb blast incident on 15.05.2019. In the said order dated 27.12.2022 the Co-ordinate Bench also observed that bail of the appellant can be considered even before completing five years of detention, if he has completed four years of detention and if there is no likelihood of trial being completed in near future. Such finding of the Co-ordinate Bench dated 27.12.2022 was not challenged by respondent NIA.

33) Further, by the said order dated 27.12.2022 the Co-ordinate Bench also granted liberty to the appellant to approach the Court again on completion of four years of detention, if in the meantime there is no substantial progress in the trial and if there is no possibility of concluding the trial in near future for seeking release on bail in the light of the observations made in the case of *K. A. Najeeb* (supra).

34) As noted above, the appellant is in custody since 27.05.2019 in said Special NIA Case No. 02/2019 (Geetanagar P S Case No. 210/2019). On being enquired, through the Registry of this Court, it is informed that as on 07.04.2025, out of 177 numbers of named prosecution witnesses, only 32 numbers of prosecution witnesses have been examined and the last prosecution witness was examined on 20.12.2024 and 30.04.2025 is the next date fixed for examination of remaining prosecution witness. The appellant herein is a student. The only apprehension of the respondent NIA is that the appellant if release on bail may threaten the witnesses and thereby interfere with the trial of the case and in such circumstances the Special Court will not be in a position to conduct fair trial.

35) Considering that as on 07.04.2025 only 32 numbers of prosecution witnesses out of 177 numbers of named prosecution witnesses in the charge-sheet have been examined by the prosecution so far, where charge sheet was filed on 11.11.2019, charge was framed on 03.02.2022 and the appellant is in custody since 27.05.2019 the Court found that appellant's right

to have a speedy trial has been infringed and the right guaranteed under Article 21 of the Constitution. if there is any further delay in concluding. We have also noticed that the trial of said Special NIA Case No. 02/2019 is without any substantive progress.

36) Therefore, we are of the considered view that the appellant has a legitimate claim to be released on bail in said Special NIA Case because of prolonged incarceration. Accordingly, the appellant namely Sanjib Talukdar, son of Uttam Talukdar is entitled for his bail in said Special NIA Case No. 02/2019, trial of which is pending before the Special Judge, NIA, Assam, Guwahati.

37) However, considering the gravity of the offence, to have committed by the appellant and to secure his presence before the said Special Court, NIA, Assam, Guwahati to proceed with the trial of said Special NIA Case No. 02/2019 we have decided to impose some stringent conditions upon the appellant while granting bail setting aside the impugned order dated 27.05.2023, passed by the learned Special Judge, NIA, Assam Guwahati in Misc (NIA) Case No. 25/2023 arising out of Special NIA Case No. 02/2019.

38) We also made it clear that the findings reached by us as above in granting bail to the appellant in said Special NIA Case No. 02/2019 are only our prima facie views in deciding the present appeal only and it will not have any bearing on the Special Judge, NIA, Assam Guwahati while deciding the said Special NIA Case No. 02/2019.

39) The appellant **Sanjib Talukdar**, son of Uttam Talukdar, accused No.7 in said Special NIA Case No. 02/2019 is enlarged on bail on following conditions —

- (i) On execution of a bail bond of Rs.1,00,000/- with 2 (two) sureties of the like amount to the satisfaction of the learned Special Judge, NIA, Assam Guwahati.
- (ii) The accused/appellant, Sanjib Talukdar, shall appear before the learned Special Judge, NIA, Assam Guwahati in said Special NIA Case No. 02/2019 on the dates of the trial of the case till its conclusion and shall co-operate with the said Court in disposal of the said case and further, shall appear in the said case as and when he is required.
- (iii) He shall surrender his Passport, if any, and if not surrendered earlier before the Court of learned Special Judge, NIA, Assam Guwahati within 2 (two) weeks from today.
- (iv) He shall not threatened, intimidate or influence the prosecution witnesses including

the protected witnesses or any other by himself, or by anyone on his behalf.

- (v) He shall not interfere with the trial of said Special NIA Case No. 02/2019 in any manner directly or indirectly.
- (vi) He shall not commit and/or shall not be involved in similar or any other offences during the bail period and thereafter.
- (vii) He shall not leave the territorial jurisdiction of the learned Special Judge, NIA, Assam Guwahati without obtaining any prior written permission from the said Court.
- (viii) In the event the appellant/accused No.7, Sanjib Talukdar violates any of the aforesaid conditions, liberty is granted to the NIA to file an application seeking cancellation of his bail.

40) With the above observation and direction, this criminal appeal stands allowed.

JUDGE

JUDGE

Comparing Assistant