

GAHC010053422023



**IN THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

**W.P.(CrI.)/9/2023**

1. Radha Chetia  
S/O Late Rudreswar Chetia,  
R/O Joyram Road, Jagun, Assam
2. Haren Gogoi  
S/O Late Jatindra Nath Gogoi  
R/O Tirap Gate District - Tinsukia Assam
3. Rakesh Jaiswal  
S/O Late Parsuram Jaiswal Tirap Gate  
District - Tinsukia Assam
4. Arunav Phukan  
S/O Dilip Phukan  
R/O 9<sup>th</sup> Mile Jagun Tinsukia Assam
5. Purna Borah  
S/O Late Dhananjay Borah  
R/O Jyoti Nagar Digboi Assam
6. Raju Khan  
S/O Late Jaffar Khan  
R/O R.G. Road Digboi Assam

7. Robi Kumar Singh  
S/O Lt. Kumar Singh  
R/O Indian Colony Margherita  
District -Tinsukia Assam

**.....Petitioners**

***-Versus-***

1. The State of Assam  
Represented by Secretary to the Govt. Of  
Assam, Home and Political Department, Assam  
Secretariat, CM Block, Second Floor, Dispur,  
Guwahati-781006, Assam
2. The Superintendent of Police  
Tinsukia Office of The Superintendent of Police  
Tinsukia District Borguri-Ukonimuria Borguri  
Bongali Gaon Tinsukia-786192 Assam
3. The Officer-In-Charge  
Margherita Police Station  
Thana Road Margerita Assam-78618

For Petitioner(s) : Mr. P. Bora, Sr. Advocate  
Ms. K. Bhattacharyya, Advocate  
Mr. A. M. Bora, Sr. Advocate  
Mr. M. K. Das, Advocate

For Respondent(s) : Mr. D. Nath, Sr. Govt. Advocate

**With W.P.(CrI.)/14/2023**

**.....Respondents**

1. Anjan Dutta  
S/O Late Tapan Kumar Dutta  
R/O Borbil No. 2 P.O. And P.S.-Digboi

District -Tinsukia Assam Pin-786171

**.....Petitioner**

***-Versus-***

1. The State Of Assam  
To Be Represented by the Commissioner and  
Secretary to the Government of Assam Home  
and Political Department Dispur Guwahati-  
781006
2. The Superintendent of Police  
Tinsukia District -Tinsukia Assam Pin-786192
3. The Officer-In-Charge  
Margherita Police Station Thana Road Margherita  
Assam-786181

**.....Respondents**

For Petitioner : Mr. P. Gogoi, Advocate  
For Respondent(s) : Mr. D. Nath, Sr. Govt. Advocate

**Date of Judgment : 02.06.2025**

**BEFORE  
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

**JUDGMENT**

**(MRIDUL KUMAR KALITA, J)**

1. Heard Mr. P. Bora, learned senior counsel assisted by Ms. K. Bhattacharyya, learned counsel for the petitioner Nos. 1, 3, 5, 6 and 7 in WP(Crl.) No.9/2023 and Mr. A. M. Bora, learned senior counsel

assisted by Mr. M. K. Das, learned counsel for the petitioner No. 2 in WP(Crl.) No.9/2023. Also heard Mr. P. Gogoi, learned counsel for the petitioner in WP(Crl.) No.14/2023 as well as Mr. D. Nath, learned Senior Government Advocate appearing for the State respondent in both the above-mentioned criminal writ petitions.

2. Since both the above-mentioned writ petitions, namely, WP(Crl.) No.9/2023 and WP(Crl.) No.14/2023, the petitioners have sought common relief of quashing of the FIR and protection from coercive action and since in both the writ petitions, the FIR concern is the common FIR, on the basis of which Margherita P.S. Case No. 42/2023 was registered under Section 120(B) of Indian Penal Code, read with Section 17 of the Unlawful Activities (Prevention) Act, 1967.
3. Hence, both the writ petitions are proposed to be disposed of by this common judgment.
4. The facts relevant for consideration of the above mentioned writ petitions, in brief, are that on 25.02.2023, one S.I. (P), Bhabesh Roy of Ledo Police Outpost under Margarita Police Station, had lodged an FIR before the Officer-in-Charge of Margarita Police Station, *inter-alia*, stating therein that there are some businessmen, who have been encouraging unlawful activities of different groups of ULFA (I), NSCM (IM), NSCM (KYA), etc. by funding them and helping them in procuring weapons and emanations, build shelters and camps, etc.

5. It is stated in the FIR that during investigation of one another case, i.e., Margherita P.S. Case No. 42/2023, in which certain documents were seized from, it reveals the names of the present petitioners along with the phone numbers and it is alleged that they have financially helped the ULFA (I).
6. On receipt of the said FIR, Margherita P.S. Case No. 61/2023 under Section 120B of Indian Penal Code, read with Section 17 of the Unlawful Activities (Prevention) Act, 1967 was registered.
7. Both the learned senior counsel for the petitioners in WP(Crl.) No.9/2023 as well as the learned counsel for the petitioner in WP(Crl.) No.14/2023 has submitted that the petitioners are innocent businessmen and sometime in the year 2018-2019, the Manager of the petitioner Nos. 1, 2, 3 and 6 were abducted by the terrorist group, namely, ULFA from a bank.
8. It is also submitted that in the year 2022, the petitioner No. 4 of WP(Crl.) No.9/2023 was himself abducted by the said banned organization.
9. It is further submitted that when the family members of the petitioners approached the police, they were advised to negotiate with the extremist group and they did not receive any assistance from the police.
10. The learned senior counsel for the petitioners has submitted that the petitioners are themselves victims of illegal activities of the banned extremist outfits and the same was reported to the police officials.

- 11.** However, instead of coming to the aid of the petitioners, the police officials filed the impugned FIR against the present petitioners making false accusation against the petitioners merely on the basis that their names and phone numbers were found in some sheets of paper, which were seized in connection with another case, i.e., Margherita P.S. Case No. 42/2023.
- 12.** The learned senior counsels for the petitioners have submitted that the accusation made in the FIR against the petitioners are so absurd and inherently improbable that on the basis of which no prudent person can ever reach a just conclusion that there are sufficient grounds for proceeding against the petitioners in the case. They submit that continuing the proceedings of Margherita P.S. Case No. 61/2023 against the petitioner on the basis of the impugned FIR dated 25.02.2023 would amount to abuse of the process of and it would be for the ends of justice that the FIR against the present petitioners are quashed.
- 13.** In support of their submission, the learned senior counsel for the petitioners have cited the ruling of the Apex Court in the case of "***State of Haryana Vs. Bhajan Lal***, reported in ***1992 Supp (1) SCC 335***.
- 14.** The learned senior counsel for the petitioners have also submitted that since one of the offence, under which accusation has been made against the petitioners is under Section 17 of the Unlawful Activities (Prevention) Act, 1967, hence, they could not prefer application for anticipatory bail under Section 438 of the Code of

Criminal Procedure, 1973 due to the embargo of Section 43 D (4) of the Unlawful Activities (Prevention) Act, 1967, which excludes the applicability of Section 438 if a person is arrested in connection with a case involving an accusation of having committed an offence punishable under the Unlawful Activities (Prevention) Act, 1967.

- 15.** However, the learned senior counsel for the petitioners have submitted that since the petitioners are innocent and they have been falsely implicated in this case merely on the basis of their names and telephone number being found on piece of papers, which were seized from some extremists and since prior to the said seizure, the petitioners were themselves victim of the harassment by extremist outfits, under such circumstances the High Court is not bereft of its power to grant the relief of protection from arrest even under Article 226 of the Constitution of India.
- 16.** In support of their submission, the learned senior counsel for the petitioners have cited the following rulings of the Apex Court:
  - i. *Hema Mishra Vs. State of UP and Others*, reported in (2014) 4 SCC 453**
  - ii. *Arnab Manoranjan Goswami Vs. State of Maharashtra and Others.*, reported in (2021) 2 SCC 427;**
- 17.** The learned senior counsel for the petitioners have also submitted that in the meanwhile by order dated 12.04.2023 the petitioners were granted interim protection from any coercive action in connection with Margherita P.S. Case No. 61/2023 and they have

cooperated in the investigation, hence, the learned counsels for the petitioners have submitted that the petitioners may be granted absolute protection from arrest or an order for grant of bail in the event of their arrest in connection with Margherita P.S. Case No. 61/2023.

- 18.** Mr. P Gogoi learned counsel for the petitioner in WP (CrI.) No.14/2023 has adopted the submissions of learned senior counsels for the petitioners made in WP(CrI.) No.9/2023.
- 19.** On the other hand, Mr. D. Nath, the learned Senior Government Advocate appearing for the State respondent has submitted that though the fact that the Manager of Petitioner No. 1, i.e., Radha Chetia, and Manager of Petitioner No. 6, Raju Khan were abducted by the banned militant organization, and in this respect, Lekhapani P.S. Case No.58/2018, and Lekhapani P.S. Case No. 27/2020, were also registered.
- 20.** However, in respect of Managers of petitioner No. 2 and 3, there is no such record regarding their abduction.
- 21.** The learned senior counsel has also submitted that the Manager of the brother of petitioner No. 5 was also kidnapped in the year 2018, on the basis of which Lekha Pani P.S. Case No. 140/2018, was registered.
- 22.** However, he submits that the family members of the petitioners did not approach the police officials for any assistance. He also submits that during the investigation of Margherita P.S. Case No. 42/2023, three sheets of paper were recovered in which the phone numbers

of the petitioners with their names were found written, and in one of those sheets, Radha Chetia was mentioned as, "Sahayak (Helper)".

- 23.** The learned senior Government counsel, therefore, submits that this is not a case where there is no material against the petitioner, and the investigation is required to be done to reveal the truth in this case.
- 24.** He has also submitted the status report of the investigation of Margherita P.S. Case No. 61/2023, submitted by the Additional Superintendent of Police (Crime), Tinsukia, which shows that the investigation has fairly progressed, and incriminating materials has been found against the petitioner during the investigation and therefore, he has submitted that both the writ petitions are liable to be dismissed.
- 25.** I have considered the submissions made by learned counsel for both the sides in both the writ petitions and have gone through the materials on record including the status report of the progress of investigation in Margherita P.S. Case No. 61/2023.
- 26.** Though, on perusal of the materials on record, it appears that the petitioners were themselves at some point of time were victim of the harassment by the banned terrorist outfits, and in respect of which, three police station cases were also registered, namely, Lekhapani P.S. Case No. 140/2015, Lekhapani P.S. Case No.58/2018, and Lekha Pani P.S. Case No. 27/2020.

- 27.** However, if we peruse the FIR, dated 25.02.2023, filed by Bhabesh Roy SI of Police, which is impugned in these writ petitions, it appears that there is a clear accusation made against the present petitioners of having financially helped the ULFA (I), which is a banned outfit. Hence, this is not a case where the allegations made in the First Information Report, if they are taken at their face value, do not constitute any offence.
- 28.** The allegations made in the FIR are also not so absurd and inherently improbable so as to brush aside the allegations in toto. The veracity or truthfulness of the allegations made in the FIR can be ascertained only after a thorough investigation into the allegations which are made. But the fact remains that names and phone numbers of the petitioners were found in some incriminating papers seized from members of militant outfit, who was killed in encounter.
- 29.** It is also true that mere finding of names in the papers so seized in itself is not sufficient to come to the conclusion of guilt of the present petitioners in respect of the alleged offence, without any other corroborating materials/evidence indicating to their complicity.
- 30.** While exercising the writ jurisdiction, this Court cannot embark upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR.
- 31.** The Apex Court has observed in the case of "***Niharika Infrastructure VBP Ltd Vs. State of Maharashtra***" reported in ***2021 (19) SCC 401*** as follows:

**33.4.** *The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).*

**33.5.** *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.*

**33.6.** *Criminal proceedings ought not to be scuttled at the initial stage.*

**33.7.** *Quashing of a complaint/FIR should be an exception rather than an ordinary rule.*

**33.8.** *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.*

**33.9.** *The functions of the judiciary and the police are complementary, not overlapping.*

**33.10.** *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.*

**33.11.** *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.*

**33.12.** *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the*

*police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.”*

- 32.** The powers of this Court while exercising writ jurisdiction under Article 226 of the Constitution of India are very wide. However, as observed by the Apex Court, conferment of wide powers requires Court to be more cautious and it casts an onerous and more diligent duty on the Court.
- 33.** In the instant case also, it would be premature to exonerate the petitioners from the accusations leveled against them in the impugned FIR without a thorough investigation reaching its logical conclusion. Hence, this Court is of considered opinion that this is not a case where the end of justice would be served by quashing of the impugned FIR. Rather, it would be served if the investigation is permitted to reach its logical conclusion.

- 34.** For the reasons discussed in the foregoing paragraphs, the prayer for quashing of the impugned FIR is hereby dismissed.
- 35.** As regards the question of protection from impending arrest of the petitioners is concerned, it appears that petitioners in both the above-mentioned writ petitions were granted interim protection from arrest by this Court and it also appears that there is nothing on record, which indicates that they have misused their liberty while they were all under interim protection by this Court.
- 36.** The Section 43D (4) of the Unlawful Activities (Prevention) Act, 1967, provides for an embargo in the applicability of the provisions of Section 438 of the Code of Criminal Procedure, 1973 in relation to any case involving the arrest of any person of having committed an offence punishable under the Unlawful Activities (Prevention) Act, 1967.
- 37.** However, such a bar is applicable only if a prima facie case is found against the petitioners. In the instant case the accusations is mainly leveled against the petitioners on the basis of their names and telephone number having been found in the three papers, which were seized in connection with a different case.
- 38.** Though, the allegations needs thorough investigation, however, it is also not a case, where merely because of the said accusation, the petitioners may be left remediless due to the embargo of Section 43D (4) of the Unlawful Activities (Prevention) Act, 1967.
- 39.** The Apex Court has observed in the case of "***Hema Mishra Vs. State of UP and Others***" (Supra) as follows:

**"35.** *It is pertinent to mention that though the High Courts have very wide powers under Article 226, the very vastness of the powers imposes on it the responsibility to use them with circumspection and in accordance with the judicial consideration and well-established principles, so much so that while entertaining writ petitions for granting interim protection from arrest, the Court would not go on to the extent of including the provision of anticipatory bail as a blanket provision.*

**36.** *Thus, such a power has to be exercised very cautiously keeping in view, at the same time, that the provisions of Article 226 are a device to advance justice and not to frustrate it. The powers are, therefore, to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by the authorities indiscriminately making pre-arrest of the accused persons. In entertaining such a petition under Article 226, the High Court is supposed to balance the two interests. On the one hand, the Court is to ensure that such a power under Article 226 is not to be exercised liberally so as to convert it into Section 438 CrPC proceedings, keeping in mind that when this provision is specifically omitted in the State of Uttar Pradesh, it cannot be resorted to as back door entry via Article 226. On the other*

*hand, wherever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice and no case, at all, is made for arrest pending trial, the High Court would be free to grant the relief in the nature of anticipatory bail in exercise of its power under Article 226 of the Constitution. It is again clarified that this power has to be exercised sparingly in those cases where it is absolutely warranted and justified.”*

- 40.** In the instant case, some of the petitioners were the victims of the harassment by the banned terrorist outfits as has been admitted by the state based on it.
- 41.** Under such circumstances, mere finding their names in the documents seized from the members of such terrorist organization, in itself, does not make a case where the petitioners may be left remediless in the event of their arrest. More so, when there is no evidence or no materials to indicate that the petitioners have misused their interim protection granted by this Court.
- 42.** This Court is of the considered opinion that under the facts and circumstances of this case if the petitioners of both the writ petitions are not given protection against arrest it would amount to gross miscarriage of justice.

- 43.** Hence, the interim protection granted to the petitioners by order dated 12.04.2023 is required to be continued.
- 44.** Therefore, these writ petitions are disposed of with directions that in the event the above-named petitioners in petition of WP(Crl.) No.9/2023 and WP(Crl.) No.14/2023 are arrested in connection with Margherita P.S. Case No. 61/2023 they shall be allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only), each with one surety of like amount to the satisfaction of the arresting authority subject to the following conditions:
- i.** That the petitioners shall co-operate in the investigation.
  - ii.** That the petitioners shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts of the case before the Investigating Officer.
- 45.** With above observation, both the writ petitions are hereby disposed of.

**JUDGE**

Comparing Assistant