

GAHC010250532024



2024:GAU-AS:13032

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

Case No. : Bail Appln./3673/2024

TONLONG KONYAK
S/O CHONGPA KONYAK
R/O YACHING VILLAGE, MYANMAR.

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR SAURADEEP DEY,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

20-12-2024

Heard Mr. S. Borthakur, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the State.

2. Petitioner, namely, **Sri Tonlong Konyak**, son of Chongpa Konyak, resident of Yaching, Village- Myanmar has filed this application under Section

483 BNSS praying for his release on bail in **Sapekhati Police Station Case No. 29/2023** registered under Sections 120B/121/121A/384 IPC read with Sections 10/13/39/40 of the Unlawful Activities (Prevention) Act, 1967, in which, he was arrested on 26.08.2023 and in custody since then.

3. Petitioner submitted that the prosecution failed to complete the investigation within time and thereby failed to submit its report within the stipulated period prescribed by law, as such, he is entitled for his default bail.

4. It is also submitted by the petitioner that for the same reason co accused arrested in the case have been granted bail and the petitioner herein is a clear victim of prejudice.

5. Petitioner stated that he is no way connected with the case and, he has been taken into custody in the present case merely on suspicion. Petitioner stated that neither the FIR of the case, nor the forwarding report of the concerned police officer forwarding the petitioner to the learned Magistrate, does not show any specific material to be considered as incriminating material to detain the petitioner in custody since 26.08.2023.

6. Petitioner stated that he belongs to Konyak Tribe of Nagaland, a major ethnic Naga group, who occupies of Mon District of Nagaland bordering Myanmar. The person who had sworn the affidavit on his behalf in this application is his cousin brother (uncle's son) from Chenloisholongkho village of Mon District, Nagaland and that such fact goes to show that the family members of the petitioner are also residence of Nagaland, India.

7. Placing the provisions of Article 21 of the Constitution of India, the decisions of the Hon'ble Supreme Court in the case of *Uday Mohanlal Acharya Vs. State of Maharashtra* reported in *2001 5 SCC 436*, a decision of the Hon'ble

Calcutta High Court decided on 27.07.2017 in the case of *Sharmistha Chowdhury and another Vs. State of West Bengal and others* as well as a common judgment and order dated 27.04.2022 passed in MC (Crl.Rev.P.) No. 2/2021 in Criminal Revision Petition No. 10/2021 of the Hon'ble Manipur High Court at Imphal, Mr. Borthakur, learned counsel for the petitioner submitted that thought the petitioner is from neighbouring country Myanmar, he is entitled for bail in said Sapekhati P.S. Case No. 29/2023 having his right under Article 21 of the Constitution of India on failure of the police authority to submits its report within the statutory period of time prescribed under the law under Section 173(2) CrPC/193(3) of the BNSS, 2023.

8. Mr. B. Sarma, learned APP have placed the up-to-date case diary before the Court and submitted that there are sufficient incriminating materials against the petitioner with regard to his involvement in the alleged crime and he being a foreigner from Myanmar, he is not entitled for bail in said Sapekhati P.S. Case No. 29/2023 under Section 43D(7) of the Unlawful Activities (Prevention) Act, 1967, the said provision being a non obstante clause.

9. Mr. Sarma also submitted that the petitioner being a foreigner, once he is released on bail in the case, there is all probability that he will not appear in the matter during trial.

10. As per the FIR of the case dated 30.05.2023, lodged on 01.06.2023 before the Officer-in-Charge of Sapekhati Police Station, District Charaideo, Assam, the complainant stated that her family is re-knowned reputable tea planter of Assam and having their Tea Estates including Handique Tea Company Private Limited with tea gardens in the Sapekhati region. There is a gradual increase in the threats and demand from the banned organization- United Liberation Front of Assam (ULFA-Independent), including financial extortion. On 30.05.2023 the

said banned organization made a demand for an amount of Rs. 12,00,000/- which they claim as an outstanding payment for the last 12 years equating to Rs.1,00,000/- per year, etc. In the said circumstances there is an imminent threat to the life of the complainant as well as her son who looks after the said Tea Company from the said banned organization. As such, by the said FIR the complainant requested to provide her and her family with personal security officers for their protection and to take appropriate action in accordance with law. The said FIR of the complainant was accordingly registered as Sapekhati P.S. Case No. 29/2023, noted above.

11. Case diary placed before the Court by Mr. Sarma, learned APP reveals that some of the persons in Charaideo district have been helping the said banned organization ULFA(I) by collecting the extortion money from the Tea Gardens owners and business of Chariadeo District. On 29.07.2023 23rd Assam Rifles "D" Coy, Banfera Camp, Police Station Sonari, District Charaideo apprehended the petitioner while carrying extortion money after collecting the same from a businessman of Borhat and pertaining to the same Borhat P.S. Case No. 28/2023 under Section 120B/121/121A/387 IPC read with Sections 10/13/39/40 of the UA (P) Act has been registered and the petitioner was arrested and forwarded to judicial custody in said Borhat P.S. Case.

12. Case diary clearly indicates that the petitioner does not have any travel documents nor any Passport to enter India from Myanmar and he is found to have entered into the territory of India illegally.

13. Case diary also indicates that the petitioner was in constant touch with some of the persons in and around Charaideo area having link with banned organization.

14. It is also indicated in the case diary that police could apprehend some of the linkmen of the banned organization and found that they were very much active with the cadres of the banned organization over phone and that the petitioner had contacted such persons apprehended by police who had their connection with the banned organization providing the contact numbers and the addresses of the businessmen of Sapekhati, Sonari and other areas of Charaideo District to the banned organization for extortion.

15. Case diary further reveals that banned organizations like ULFA(I), NSCN (K-YA) are giving ransom notice to the businessmen of Charaideo District including Sapekhati and Sonari and also helping such banned organization by giving ransom money, whose Tea Estates and business area adjacent to Myanmar border area. Moreover, as per the records the petitioner who is to collect such ransom money/demand money and used to hand over the same to the banned organizations in their hideouts at Myanmar.

16. While trying to cross India to Myanmar he was apprehended by Assam Rifles with 3.2 lacks of extortion money and he was handed over to Mon Police Station for which Mon P.S. Case No. 49/2023 under Section 384/107 IPC read with Section 10(a)(iii)(iv) of the UA(P) Act has already been registered against him.

17. Regarding bail to a foreigner as provided under Sub Section 7 of Section 43D of the UA(P) Act, 1967 is applicable to the entire offences under the said 1967 Act and is not limited to Chapter IV or VI of the said Act. Section 43D (7) of the UA(P) Act, 1967 reads as follows:-

“Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.”

18. In the case is hand the petitioner is neither an Indian citizen nor he has entered into India with due authorization, nor it is the case of the petitioner that he has valid travel documents or passport to travel to /enter India. It is a clear case that the petitioner has entered India unauthorisedly and illegally. There is also no exceptional circumstances claimed by the petitioner for consideration of his case. As per the provisions of Section 43D (7), a non-obstante clause, noted above, the benefit of default bail in terms of non-compliance of Section 173(2) CrPC / 193(3) BNSS will not be applicable to a foreigner, who is an accused of an offence under the said 1967 Act and who has entered the country unauthorisedly or illegally, like the petitioner herein, cannot be granted to such an accused.

19. Accordingly, this bail application of the petitioner, **Sri Tonlong Konyak**, son of Chongpa Konyak, in said Sapekhati P.S. Case No. 29/2023 **stands rejected**.

20. Return the case diary herewith.

JUDGE

Comparing Assistant