

MC 540/2009

BEFORE

HON'BLE THE CHIEF JUSTICE MR J CHELAMESWAR

HON'BLE MR JUSTICE I A ANSARI

The applicant, Sri Paresh Chandra Das, who is a driver under the Directorate of Technical Education, Assam, and posted at Assam Engineering Institute, Guwahati, was arrested in connection with Basistha Police Station Case No. 119/2006, under Section 387 IPC, read with Section 10/13 of the Unlawful Activities (Prevention) Act.

By order, dated 30.06.2006, passed, in Bail Application No. 1385/2006, the petitioner was directed to be released on bail. As the petitioner had remained in custody for more than 48 hours, he was placed under suspension, by order, dated 11.09.2006, passed by the Principal, Assam Engineering Institute. On the basis of an application, filed before the Assam Administrative Tribunal, the order, suspending the petitioner, was vacated. The petitioner, in course of time, rejoined his service. The petitioner's grievance is that, on 09.02.2009, some police personnel from Hajo Police Station came to the petitioner's house, when the petitioner was not present in his house, and enquired as to how the petitioner had rejoined his service. The petitioner states in this writ petition that though the family members of the petitioner apprised the police personnel of the fact that the order of his suspension had been quashed by the learned Tribunal, the police have been frequently visiting the house of the petitioner and telling them that the petitioner had no right to rejoin his service. The petitioner has, therefore, with the help of this writ application, made under Article 226 of the Constitution of India, sought for appropriate directions to be issued to the respondents restraining them from indulging in harassing the petitioner.

During pendency of this writ petition, an interim order was passed, in Misc. Case No. 540/2009, directing the respondents not to interfere with the life and liberty of the petitioner and his family members except in accordance with law. The respondents have, now, filed their affidavit, wherein they have, while denying that the petitioner was being harassed, as alleged by the petitioner, averred to the effect, inter alia, thus: Hajo Police Station Case No. 185/2008 has been registered under Section 3 of the Explosive Substances Act, read with Section 10/13 of the Unlawful Activities (Prevention) Act and, in connection therewith, one Gautam Sarma of Hajo was arrested. From the recorded statement of the accused Gautam Sarma, it transpired that the petitioner had been working as a linkman of the banned organization, namely, ULFA. In order to verify the correctness of the statement, so made by the said accused against the petitioner, and also in order to obtain more clues in connection with the case aforementioned, the police formed the opinion that the interrogation of the writ petitioner was necessary. With this end in view, police from Hajo Police Station had visited the residence of the petitioner on 09.02.2009, and also on 14.02.2009, but did not find the petitioner in his residence. The members of the petitioner's family were, then, informed by the police that the petitioner was required for the purpose of interrogation in connection with Hajo Police Station Case No. 185/2008, and the petitioner's family members were asked to inform the petitioner to make himself available, at Hajo Police Station, for interrogation. This apart, when asked by the police, the family members of the petitioner expressed their ignorance about the whereabouts of the petitioner. However, despite the information given to the petitioner's family members, when the petitioner did not make himself available for interrogation, the police visited the petitioner's residence on 21.02.2009, at about 1-30 p.m., and, in order to elicit information as regards the whereabouts of the petitioner, the petitioner's son, Pankaj Das, was brought to Hajo Police Station and interrogated there, but, as Pankaj Das did not reveal anything, he was allowed to leave the police station at about 5-00 p.m., on the very day, asking him to inform his father (petitioner) that he (petitioner) was required by the police in connection with the said case. As the petitioner did not turn up on the following day, i.e., 22.02.2009, the petitioner's said son was again brought to the police station, on 22.02.2009, at about 7-00 p.m. and, after some interrogation, he was allowed to leave at 9-00 p.m. As the relevant info

rmation, as regards the petitioner's whereabouts had not been forthcoming, the petitioner's said son was, once again, brought to the police station, on 23.02.2009, at about 9-00 a.m. and, on that day, on being interrogated, the petitioner's said son revealed some information with regard to the petitioner's whereabouts.

The petitioner's said son was, then, allowed to leave the police station at about 10-00 a.m., after, of course, signing a bond undertaking to make himself available, if required, for interrogation by the police. On the basis of the information elicited from Pankaj Das, the Officer-in-Charge, Hajo Police Station, went, on 25.02.2009, in search of the petitioner, to the petitioner's office at Chandmari, Guwahati, but the petitioner was not found available there. The Officer-in-Charge, Hajo Police Station, visited the petitioner's office at Chandmari, Guwahati, on 28.02.2009, and, on 10.03.2009 too, but did not find the petitioner at his office. The Officer-in-Charge, Hajo Police Station, therefore, left a written notice, with the staff of the Assam Engineering Institute, to the effect that the petitioner was required to report to the Officer-in-Charge, Hajo Police Station, for interrogation in connection with Hajo Police Station Case No. 185/2008, but till date the petitioner has not made himself available for interrogation.

Having heard Mr. A. S. Choudhury, learned Senior counsel, appearing on behalf of the petitioner, and Ms. B. Goel, learned Government Advocate, appearing on behalf of the respondents, we find that the respondents have stated the circumstances, which required the police to visit the petitioner's house and office.

In view of the fact that the petitioner's name has surfaced in connection with Hajo Police Station Case No. 185/2008 and, as the petitioner has been, according to what the respondents submit, evading the police, we consider it necessary and in the interest of justice to direct the petitioner to make himself available, at Hajo Police Station, for interrogation by police in connection with the case aforementioned. We, therefore, direct the petitioner to appear, forthwith, at Hajo Police Station and, upon his appearance, the police shall be at liberty to interrogate and deal with the petitioner in accordance with law. If the Investigating Agency finds it necessary to arrest the petitioner in connection with the case aforementioned, they may do so in accordance with law, but shall produce the petitioner before the nearest Judicial Magistrate, in accordance with the Constitutional and statutory provisions, within a reasonable period of time. If the petitioner's further custody, for interrogation or otherwise, is required by the police, the Investigating Agency shall remain free to take such steps as may be permissible in law.

With the above observations and directions, this writ petition as well as the Misc. Case shall stand disposed of.

Furnish a copy of this order to the learned Government Advocate.