



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

Case No. : CRAPL 7/2020

1:RABI PAME
S/O LATE NSANGING,
R/O H.NO 65, MODEL VILLAGE, 5 MILE, DIPHUPAR, DIMAPUR,NLD.

VERSUS

1:NATIONAL INVESTIGATION AGENCY AND ANR.
REPRESENTED BY ITS DIRECTOR GENERAL, 6 AND 7 FLOOR,
NDCC-II BUILDING,
JAI SINGH ROAD, NEW DELHI-110001

2:ADDITIONAL SUPERINTENDENT OF POLICE
CHIEF INVESTIGATING OFFICER
NIA

BRANCH OFFICE
GUWAHATI
ASSAM

Advocate for the Petitioner : TONGPOK PONGENER
S. BORGOHAIN
M. SOLO

Advocate for the Respondent : VISHAL DWIVEDI

BEFORE
HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO
HON'BLE MR. JUSTICE S. HUKATO SWU

Date : 30-10-2020

JUDGMENT & ORDER (CAV)

(S. Serto, J)

Heard Mr. S. Borgohain, learned counsel appearing for the petitioner and also heard Mr. Vishal Dwivedi, learned P.P. NIA.

2. This is a criminal appeal filed under section 21 (4) of the NIA Act, 2008 directed against the order of the Special Judge, NIA at Dimapur dated 24/8/2020, passed in IA (Crl) 188/2020, in connection with NIA Case No.RC-02/2020/NIA/Guw, wherein the application of the appellant praying for his release on bail was rejected. The brief facts leading to the arrest and remand of the accused in custody are briefly stated here below:

On 5/7/2020, an FIR was lodged to the OC of Diphupar Police Station Dimapur by one JCO of 5th Assam Rifles stating that, following an information received from reliable source that, funds meant for PMGSY and NREGA in the State of Manipur and Nagaland were being diverted to some unlawful organizations mainly, NSCN-IM, a joint operation was conducted with local police on 4/7/2020 and as a result 2 suspected persons were apprehended and, a vehicle along with a sum of Rs.11 lakhs were also seized from their possession.. And following their apprehension one of the accused Mr. Rabi Pame (appellant/accused herein) from whom a sum of Rs.11 lakhs was stated to have been collected was arrested. And thereafter, in pursuance of their statement, the house of one Rayilung Nsarangbe a self styled SS Col NSCN IM was searched and a sum of Rs.1,32,72,800/- along with arms and ammunitions were seized. Therefore, detail investigation may be carried out and charges under appropriate law may be framed.

After the arrest the appellant/accused along with other accused were produced before the Judicial Magistrate, Dimapur on 6/7/2020 and they were remanded for 10 days to Police custody. Before the completion of Police custody period the NIA submitted an application before the learned Special Judge, NIA Court at Dimapur for handing over the case to them. The learned Special Judge

allowed the petition and transferred the case to NIA from State Police. After the Police remand period was over the appellant/accused along with other accused were remanded to judicial custody. On 22/7/2020, the appellant filed an application praying for his release on bail, before the learned Special Judge, NIA Dimapur. But the same was rejected by an order passed by the learned Special Judge on 24/8/2020. Aggrieved by the said order the petitioner is before this Court.

3. Mr. S. Borgohain, learned counsel appearing for the appellant, submitted that, the sum of Rs.11 lakhs, seized from the 2 accused was sent by one Mr. Armstrong from Manipur to the appellant/accused with a request that, the same should be handed over to some persons who will come and collect but, he was never told as to who and what kind of persons they are and the purpose. Since he has been associated with Mr. Armstrong for a long time and trusted him, he agreed to do as requested but he was never aware that the persons who would come to collect the money belongs to any of the underground groups. Therefore, the appellant had no intention of committing any of the offences charged or levelled in the FIR case, he was only acting like a post office. As such, he is innocent of all the charges levelled in the FIR case and he deserves to be released on bail. The learned counsel further submitted that the appellant is a Reverend and is involved in religious activities. He also submitted that the appellant never had any criminal antecedents and he never knew the persons who came to collect the money. The learned counsel, then, submitted also that one Smti Ramningale Pame, a member of Autonomous District Council Tamenglong had written a letter to the Commissioner of Police, Dimapur and in that letter she had stated that the service of Mr. Rabi Pame (appellant) was used for transferring the money to the cadres of NSCN-IM but without telling him that the money was for NSCN-IM, therefore, he is an innocent person as such, his case should be treated differently. The learned counsel further submitted that the same person had also sent an affidavit sworn before a Sub-Divisional Magistrate in which the same statements were made. After having referred to the said letter and affidavit, the learned counsel further submitted that all these goes to show that, the appellant was an innocent man and his service was used without his knowledge regarding the persons to whom it was to be delivered and the purpose. Therefore, the charges levelled in the FIR case are not attracted

in his case.

4. Mr. S. Borgohain, learned counsel submitted also that, in a case under UA(P) Act what one must look at while considering a bail application is whether a prima facie case is made out of the charges levelled against the accused. The learned counsel went on to submit that in this case no prima facie case is made out against the accused though almost 4 months has been taken by the investigating machineries. Therefore, the appellant deserves to be released on bail. He referred to the judgment of Hon'ble Supreme Court passed in the case of **NIA –vrs- Zahoor Ahmad Shah Watali** reported in **AIR 2019 SC 1734/2019 CriL.J 2690**.

5. Mr. Vishal Dwivedi, learned P.P.NIA submitted that the appellant/accused, after delivering Rs.11 lakhs to the other co-accused persons received Rs.8000/- as commission, therefore, there is strong prima facie case against him also. He also submitted that the letter and affidavit of Smti Ramningale Pame does not help his case. The learned P.P., thereafter, also submitted that the letter reveals that the appellant/accused and Mr. Armstrong had a long relationship, therefore, he is bound to know the reason for which the fund was transferred. The learned P.P. further submitted that once prima facie case is made out against an accused under UA(P) Act such accused cannot be granted bail. Lastly, the learned P.P. submitted also that, in case the appellant is released on bail he is likely to threaten the witnesses.

6. We have considered the submissions of the learned counsels and also perused the judgment referred to by them. We have also gone through the Case Dairy of the case placed before us which are 4 in volumes. It appears from the statement of the appellant and the statement of Armstrong recorded under Section 161 that the appellant was not aware as to exactly to whom the money was to be handed over and the purpose there of. It also appears that the appellant/accused was only requested to receive the money and hand over to some persons who would come and collect it. Further, it also appears from the statement of Mr. Armstrong that he was requested by his sister on behalf of the road construction company who are working at Tamenglong to transfer the money to any person he knows in Dimapur without telling him that it was meant for any unlawful organisation. Furthermore, the statements of the other accused does not show that the appellant and them had earlier association and they had meeting of the mind

regarding the transfer of the money. From all these, what one can conclude prima facie, is that, the appellant/accused was not acquainted with the NSCN-IM cadres and was not a middleman or person who works for that organization specially, for the purpose of extortion or collection of funds. Therefore, it is difficult to connect the appellant/accused with the crimes for which he and the others were arrested.

7. From the records what we can gather is that the appellant/accused is a religious worker, having a standing in the society with no record of any criminal antecedents. Further, we also find that almost 4 months have passed by since the appellant/accused was arrested and investigation was taken up, but so far, nothing incriminating has been found against him. Therefore, we are of the view that he should be granted bail under certain conditions. Hence, the appeal is allowed. The appellant shall be released on bail on furnishing a PR bond of Rs. 1 lakh with a surety bond of the like amount, to the satisfaction of the Special Judge, NIA Dimapur. During the pendency of the case, the appellant shall cooperate with the investigation machineries and shall not leave station without permission of the investigation Officer. He shall also not leave the country without permission of the investigation officer.

8. Return the Case Dairy to the learned P.P. NIA, Mr. Vishal Dwivedi and also send back the LCRs to the learned Special Judge along with a copy of this order by special messenger.

JUDGE

JUDGE

Comparing Assistant