



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION (CRIMINAL) NO.2504 of 2023

AKHIL GOGOI

...PETITIONER(S)

VERSUS

**THE STATE (NATIONAL INVESTIGATION
AGENCY) & ORS.**

...RESPONDENT(S)

J U D G M E N T

V. Ramasubramanian, J.

1. Aggrieved by the Judgment of the Gauhati High Court allowing an appeal preferred by the State (National Investigation Agency¹) and thereby reversing an Order of discharge passed by the Special Court, NIA, Guwahati, Assam, the person named as accused No.1 in the criminal case has come up with this special leave petition.

2. We have heard Shri Huzefa Ahmadi, learned senior counsel appearing for the petitioner and Shri Tushar Mehta, learned Solicitor General and Ms. Aishwarya Bhati, learned Additional

¹ For short, "NIA"

Solicitor General appearing for the respondents.

3. A FIR being Chanmari Case No.1688/2019, was registered against the petitioner and three others on 13.12.2019 for alleged offences punishable under Sections 120B, 124A, 153A and 153B of the Indian Penal Code, 1860 read with Sections 18 and 39 of The Unlawful Activities (Prevention) Act, 1967. NIA took over the investigation and the FIR was re-registered as RC-13/2019/NIA-GUW [KMSS-CPI(Maoist)] link case.

4. The petitioner was arrested on 17.12.2019 and a charge-sheet was filed on 29.05.2020.

5. The application for bail filed by the petitioner was rejected by the Special Court on 07.08.2020. The challenge to the same before the High Court as well as this Court proved unsuccessful.

6. However, by an order dated 01.07.2021, the Special Court (NIA) discharged the petitioner. As a consequence, the petitioner was released, after suffering incarceration for about 567 days.

7. NIA preferred an appeal before the High Court of Gauhati, challenging the order of discharge. The said appeal was allowed by the Gauhati High Court by a Judgment dated 09.02.2023. It is against the said Judgment that the petitioner, arrayed as

accused No.1, has come up with this special leave petition.

8. It is relevant to note at this stage that there were 4 accused in the criminal case. The Special Court discharged all the four accused, by its order dated 01.07.2021 and the said Order of the Special Court was overturned by the High Court. Therefore, persons arrayed as accused Nos.2 and 3 first came up with special leave petition in SLP (Crl.) No.2292 of 2023. The said special leave petition was dismissed by this Court by an Order dated 17.02.2023, which reads as follows:-

“After hearing learned counsel for the petitioners and learned Solicitor General for the State, we are of the view that the High Court has merely set aside the order of the Special Court and remanded the matter back to the trial court to conduct fresh hearing on the question of framing of charge.

Therefore, the impugned order does not call for any interference at this stage, and hence, the special leave petitions are dismissed.

Pending application(s), if any, shall stand disposed of.”

9. It is only thereafter that the petitioner herein (A-1) came up with this special leave petition. Therefore, this special leave petition also deserved to meet with the same fate. But Shri Huzefa Ahmadi, learned senior counsel pointed out that on one aspect, the petitioner herein stands on a different footing from

accused Nos. 2 and 3. Accused Nos. 2 and 3 were released on bail even before the order of discharge was passed by the Special Court and hence there was no threat of their arrest, consequent upon the order of discharge being set aside by the High Court. However, in this case, the petitioner is likely to be arrested, pursuant to the impugned judgment of the High Court, as his bail application stood rejected upto this Court. Therefore, the learned Senior Counsel pleaded that if the Court was not inclined to order notice, the petitioner should at least be protected against arrest.

10. In view of the aforesaid, this Court ordered notice, for a limited purpose when this special leave petition came up for orders as to admission,. The order dated 21.02.2023 passed in this special leave petition is self-explanatory and it is reproduced as follows:-

“Let notice be served on the standing counsel for the State (NIA), for the limited purpose of considering the grant of protection to the petitioner from arrest pursuant to the impugned order, returnable on 24.02.2023.

In the meantime, the petitioner shall be protected against arrest in connection with FIR bearing No. RC-13/2019/NIA- GUW dated 14.12.2019, Police Station NIA, Guwahati.”

11. Therefore, we heard arguments confined only to the question of protection against arrest.

12. Strongly opposing the plea for protection against arrest, Shri Tushar Mehta, learned Solicitor General contended: *that* there are as many as 64 FIRs against the petitioner; *that* the petitioner is the leader of a terrorist organization inciting and training youngsters to take to violence; *that* the bail application moved by the petitioner was dismissed upto this Court; *that* the release of the petitioner on 01.07.2021 was pursuant to a wrong order of discharge and, hence, the moment the order of discharge was set aside by the High Court, the benefit derived by the petitioner on account of the wrong order of discharge should also be forfeited; and *that* in any case, this Court cannot allow this special leave petition arising out of discharge proceedings, to be converted into an application for bail. According to the learned Solicitor General, the above special leave petition deserves to be dismissed and the law permitted to take its own course and that if in the process, the petitioner gets arrested, his remedy will be to move a fresh bail application.

13. The learned Solicitor General also drew our attention to the statements of the protected witnesses relied upon by the NIA and pleaded that the petitioner does not deserve any sympathy.

14. In response, it was argued by Shri Huzefa Ahmadi, learned senior counsel, *that* the petitioner had already suffered incarceration nearly for a period of 18½ months from 17.12.2019 to 01.07.2021; *that* after the order of discharge, the petitioner has been a free person for the past more than 21 months; *that* the petitioner is a sitting member of the Assam Legislative Assembly, having been elected in the elections held in 2021; *that* the FIR out of which the present proceeding arises, relates to the protest organized by several political parties and independent organizations against The Citizenship (Amendment) Act, 2019; *that* the allegations revolving around Maoist ideology, allegedly propagated by the petitioner, are linked to certain statements said to have been made by the petitioner in the year 2009; *that* those statements attributed to the petitioner, even if true, were of the distant past which have no proximity to the events that led to the present FIR; *that* even the statement of a protected witness extracted in paragraph 26 of the impugned judgment of the High

Court clearly shows that the petitioner did not support any ideology focused on violent methods; and *that* therefore, the petitioner deserves to be protected against arrest.

15. We have carefully considered the rival submissions.

16. Before we proceed to consider the rival contentions, we are obliged to note that the order of discharge passed by the Special Court was reversed by the High Court on two grounds, *namely*, **(i)** that the prosecution was not granted sufficient opportunity by the Special Court to respond to the written submissions filed at the last minute by the accused, running to about 1225 pages; and **(ii)** that at the stage of framing of charges, the Special Court ought not to have entered into minute details. Since the High Court was reversing the order of discharge only on these two grounds, the High Court actually remanded the matter back to the Special Court for a fresh consideration.

17. It will be relevant in this regard to extract paragraph 53 of the impugned order as follows:

“53. For the reasons stated above, we are of the considered opinion that the entire matter calls for re-consideration by the learned Special Judge, NIA. We accordingly, set aside the impugned order dated 01.07.2021 and remand the matter back to the learned trial court to conduct a fresh hearing on the

question of framing of charge against all the four accused persons. In doing so, it will be open for the learned Special Judge to record fresh reasons, in the light of the observations made above, as regards existence or otherwise of materials for framing charge against all or any of the accused persons. It would also be open for the learned Special Judge, NIA to consider, if this is a case where charge can be framed against the accused persons under the UA(P) Act or whether charge needs to be framed against all or any of them only under the provisions contained in the IPC. On such consideration, if it is found that the statements of the witnesses and the documents on record are not sufficient to frame charge against the accused persons under any of the provisions of the UA(P) Act but there are materials to frame charge under the provisions of the IPC, then in that event, the learned court below may invoke jurisdiction under Section 20 of the National Investigation Agency Act, 2008 and transfer the matter for trial by the competent court having jurisdiction in the matter.

18. It is clear from the operative portion of the impugned order extracted above that the matter is actually at large as on date. The Special Court is now obliged to hear both parties and take a fresh call as to whether charges can be framed against all or any of the accused and, if so, under what provisions of law. It is in this context that the question whether the petitioner should be allowed to be sent back to custody, has to be considered.

19. It is true that the application for bail filed by the petitioner, during the period when investigation was pending, was rejected upto this Court. But as rightly pointed out by Shri Huzefa

Ahmadi, learned senior counsel, this Court recorded in its order dated 11.02.2021 that it was not inclined to grant bail to the petitioner “**at this stage**”. Therefore, the dismissal of the application for bail at the time when investigation was pending, is no ground to reject the prayer for protection against arrest, now made by the petitioner.

20. It is true as contended by the learned Solicitor General that the present special leave petition concerns only one question namely whether the Judgment of the High Court reversing the order of discharge passed by the Special Court, is correct or not. But it does not mean that the Court, while rejecting the prayer for a larger relief, cannot even consider the grant of the smaller relief.

21. Admittedly the petitioner has suffered incarceration for about 567 days from 17.12.2019 to 01.07.2021. He has been out as a free man for the past more than 21 months. It is important to note that his freedom was secured not by an order of bail, but by an order of discharge passed by the Special Court, which has now been reversed by the High Court. Nothing has been brought on record to show that during this period of 21 months, when the

petitioner has been a free man, he has indulged in any unlawful activity. On the contrary, the petitioner got elected to the Legislative Assembly in the year 2021 and he is now a sitting member of the Assembly.

22. Except in cases of preventive detention, the purpose of detaining a person in police/judicial custody, is either to facilitate fair and proper investigation or as a measure of penalty after conviction. In this case, (i) the investigation is over and (ii) the petitioner is not yet a convicted criminal. Therefore, we do not think that any purpose will be served in allowing the Special Court to remand him to custody and then enabling him to move an application for bail.

23. In fact, the offences under the Indian Penal Code alleged against the petitioner are punishable only with imprisonment for a period of upto 3 years. It is only the offences alleged under the Unlawful Activities (Prevention) Act, which are punishable with larger terms of imprisonment. If the offences under the IPC alone are taken into account, the petitioner has served, as an undertrial prisoner, more than half of the maximum period prescribed under the relevant provisions. Therefore, this is not a

case where the petitioner should be allowed to be detained in custody, especially after having secured an order of discharge, rightly or wrongly.

24. In view of the above, we are of the considered opinion that the petitioner is entitled to be protected against arrest and detention in connection with the FIR in Chanmari Case No.1688/2019, re-registered as RC-13/2019/NIA-GUW [KMSS-CPI(Maoist)] by the NIA.

25. Therefore, the special leave petition is disposed of **(i)** confirming the Judgment of the High Court in all respects but **(ii)** directing the release of the petitioner on bail, pending trial, subject to such terms and conditions as may be imposed by the Special Court (NIA) Guwahati. There will be no order as to costs.

..... **J.**
(V. RAMASUBRAMANIAN)

..... **J.**
(PANKAJ MITHAL)

New Delhi;
April 18, 2023

ITEM NO.1502

COURT NO.15

SECTION II

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**

**Petition(s) for Special Leave to Appeal (Crl.) No(s).
2504/2023**

**(Arising out of impugned final judgment and order dated 09-
02-2023 in CRLA No. 121/2021 passed by the Gauhati High Court)**

AKHIL GOGOI

PETITIONER(S)

VERSUS

THE STATE (NATIONAL INVESTIGATION AGENCY) & ORS. RESPONDENT(S)

([HEARD BY: HON. V. RAMASUBRAMANIAN AND HON. PANKAJ MITHAL, JJ.]

**(FOR ADMISSION and IA No.38683/2023-PERMISSION TO FILE
ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)**

**Date: 18-04-2023 This petition was called on for pronouncement
of judgment today.**

**For Petitioner(s) Mr. Huzefa Ahmadi, Sr. Adv.
Mr. Ninad Laud, Adv.
Mr. Santanu Borthakur, Adv.
Mr. Ivo Dcosta, Adv.
Mr. Karan Mathur, Adv.
Mr. Sahil Tagotra, AOR**

**For Respondent(s) Mr. Tushar Mehta, Solicitor General
Mrs. Aishwarya Bhati, A.S.G.
Mr. Kanu Agarwal, Adv.
Mr. Shuvodeep Raoy, Adv.
Mrs. Chitragda Rastrawara, Adv.
Mr. Rustam Singh Chauhan, Adv.
Ms. B.L.N. Shivani, Adv.
Mr. Arvind Kumar Sharma, AOR**

**Hon'ble Mr. Justice V. Ramasubramanian pronounced the
judgment of the Bench comprising His Lordship and Hon'ble Mr.
Justice Pankaj Mithal.**

The Special Leave Petition is disposed of in terms of the signed non-reportable judgment. The operative portion of the judgment reads as follows:

"25. Therefore, the special leave petition is disposed of (i) confirming the Judgment of the High Court in all respects but (ii) directing the release of the petitioner on bail, pending trial, subject to such terms and conditions as may be imposed by the Special Court (NIA) Guwahati. There will be no order as to costs."

Pending application(s), if any, shall stand disposed of.

(POOJA SHARMA)
COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)

(Signed non-reportable judgment is placed on the file.)