

GAHC010066132020



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

Case No. : Bail Apnl. 834/2020

1:AKHIL GOGOI

S/O LATE BOLO RAM GOGOI, R/O HOUSE NO. 40, NIZARAPAR, P.S.-
CHANDMARI, GUWAHATI-781003, DIST-KAMRUP(M), ASSAM

VERSUS

1:THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Counsel for the applicant : Mr. S. Borthakur

Counsel for the respondent : Mr. P.P. Baruah,
Public Prosecutor, Assam

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. AJAI LAMBA

26-03-2020

1. Sri Akhil Gogoi has filed this application for bail under Section 439 of the Code of Criminal Procedure, 1973 in Crime Branch Police Station Case No.01/2019 under Section 120(B)/122/123/143/147/148/149/150/152/ 153/326/333/353 of the Indian Penal Code.
2. The Court proceedings have been conducted by means of creating a Virtual Court with the help of technology, so as to maintain distance between the staff, Advocates and the Presiding Judge.
3. I have heard Mr. S. Borthakur, learned counsel for the applicant and Mr. P.P. Baruah, learned Public Prosecutor, Assam for the respondent.
4. I have gone through the FIR at issue, registered at the instance of Inspector (UB), Crime Branch Police Station, Police Commissionerate, Guwahati. The accusation is that

source information was received that the applicant Akhil Gogoi and some other named accused, with some unknown persons conspired and committed various criminal acts with intent to facilitate design to wage war against the State, by means of using the passage of Citizenship Amendment Bill in Parliament as a cause. The accused persons used CAB as an opportunity to abet, incite unlawful assemblies with deadly weapons at various places and abetted extreme violence.

It has further been alleged that the persons named in the FIR along with others, connived, engaged and promoted the engagement of persons to become members of unlawful assembly at various places in Assam. It has been alleged that various incidents of violence took place within the jurisdiction of Kamrup (Metro) on 11th December, 2019, and afterwards, as a result of full-fledged conspiracy secretly hatched by the accused named in the FIR along with some other unknown persons. It has been alleged that in pursuance to unlawful common object to assault and voluntarily cause grievous hurt to public servants by deadly weapons and inflammable substances likely to cause death, the conspiracy was hatched.

5. Learned Public Prosecutor has filed the objections to bail through the Assistant Commissioner of Police (Crime), who would be the Investigating Officer of the case. In the said document, it has been alleged that on 16th December, 2019, the FIR was registered to the effects above narrated.

6. So far the opposing of bail is concerned, it has been stated that during investigation, it has been brought out that accused is one of the persons named in the FIR; the applicant is Convenor of Gamna Mukti Sangram and Advisor/Ex-President of Krishok Mukti Sangram Samity (KMSS) and had hatched a conspiracy with his associates under the shadow of protest against Citizenship Amendment Bill (CAA). The investigation carried out indicates that the applicant was mastermind of the conspiracy. The intercepted telephone communication with other members of KMSS from 4th December, 2019 onwards indicates instigation of workers to launch massive protest against Citizenship Amendment Bill (CAB) and to bring them to Guwahati for the purpose. It has been alleged that the purpose of getting the supporters to Guwahati was for indiscriminate violence and damage to public property, rail road blockade and creating law and order problems.

7. It has been stated that the accused himself admitted that he took part in protest rallies. It has been brought out that the applicant was actively taking part in various rallies and instigating common citizens, which is an act of criminal design to wage war against the State.

8. It has been stated in the document that statement of other accused persons and video footages show that from 4th December, 2019 onwards, the applicant and his associates of the organization and independent witnesses established the applicant to be the brain behind all the criminal activities including rail road blockade. The public was motivated to launch massive protest against Citizenship Amendment Bill and Citizenship Amendment Act. It has also been alleged that people were provoked to cause riots which has created enmity between various communities on the ground of religion, race, residence, etc., which is prejudicial to maintenance of harmony, thus endangering security and endangering sovereignty of the State and waging of war against the State.

9. I have specifically questioned the learned Public Prosecutor as to whether KMSS (supra) is an illegal association or organization. Learned Public Prosecutor has not been able to draw attention of the Court towards any document that would establish the said association to be an illegal association. Learned Public Prosecutor has not been able to draw the attention of the Court towards any actionable evidence or material that would indicate waging of war against the State, other than the accusations and contents of the document filed in opposition of bail.

10. Learned Public Prosecutor has not been able to dispute that essentially the applicant carried and instigated other people to protest against the Citizenship Amendment Bill and Citizenship Amendment Act, whereby public properties were destroyed and lives were lost.

11. I have specifically questioned learned Public Prosecutor as to under what circumstance it has being concluded by the Investigating Agency that such protest against the Bill would constitute waging war against the State. From the document filed before me, through the Assistant Commissioner of Police (Crime), who is the Investigating Officer, no such actionable evidence or material has been pointed out that such protests against CAB and CAA would be sufficient to be translated, at this stage of investigation/stage, so as to conclude that the applicant and other accused waged war against the State.

12. The best case of the prosecution appears to be that the persons named in the FIR and the others instigated the public at large, to protest against the CAB and CAA, which caused damage and destruction to the public property and injuries to public servant and some deaths.

13. Considering such actions and incidents that had taken place virtually all over the country, I am of the considered view that further custody of the applicant shall not serve any purpose in law, or any purpose of investigation. The applicant has been in custody for 41 days. The conclusion of investigation, and subsequent trial is likely to take considerable time.

It would be for the trial court to consider, on the basis of evidence, whether such alleged acts were only in protest against the proposed amendment (CAB) and the amendment to the Constitution (CAA); or were acts amounting to waging war against the State.

14. Learned counsel for the applicant Mr. S. Borthakur has made a clear statement that while the case is pending trial the applicant will not indulge in any activities or protest, which might result in violent incident or damage to public property.

15. Considering the statement given on behalf of the applicant and other circumventing factors, the application is allowed.

16. The applicant be released on bail to the satisfaction of the Chief Judicial Magistrate, Kamrup (Metro).

17. Heavy surety.

18. It is made clear that in case the applicant at any point in time during the investigation or trial intimidates or influences or approaches any witness of the incidents, the prosecution would be at liberty to seek cancellation of bail. It is further directed that the applicant shall not delay the process of investigation or trial.

19. Let copy of this order be provided under the signature of the Court Master.

CHIEF JUSTICE

Comparing Assistant