

GAHC040001632023



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

Case No. : AB 5/2023

1:Biri Kama
Son of Shri Biri Khyoda,
Resident of Anya Colony, PO and PS Nirjuli, District Papum Pare, Arunachal Pradesh.

VERSUS

1:THE STATE OF AP
Represented by the Public Prosecutor.

Advocate for the Petitioner : Chorpok Modi

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 22.02.2023

Heard Mr. C. Modi, learned counsel for the petitioner. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State of Arunachal Pradesh and Mr. J. Riram, learned counsel appearing on behalf of the informant and also assisted the learned Additional Public Prosecutor.

This is an application under Section 438 of the Code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with Nirjuli P.S. Case No. 08/2023, under Sections 341/326/506 of the Indian Penal Code, corresponding to G.R. No. 91/2023.

The Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioner, Mr. C. Modi, that the accused/petitioner is innocent and no way involved in the alleged offence. Both the informant and the accused were good friends and they were staying in the same building and the accused/petitioner was the tenant of the victim. It is a fact that the incident had happened while they both went to a Bar and after some time, the accused/petitioner proposed to leave the Bar, but the victim was keep on insisting him to take alcohol till next morning around 3:30 a.m. The owner/Bar Manager has annoyed them and was trying to drive them out the Bar and in order to scare the Manager of the Bar, the present accused/petitioner took out his dao and in the meantime, the victim was trying to stop the accused/petitioner and was trying to snatch the dao from the accused/petitioner, the victim, suddenly, got hurt and sustained cut injury from the dao of the accused/petitioner. He had no intention to cause hurt to the victim and the incident was happened only to scare the Manager of the Bar and the accused/petitioner, being a friend of the victim, took the victim to the hospital for treatment also. The accused/petitioner is willing and ready to co-operate with the I.O. in the further investigation of this case if he is granted

with the privilege of pre-arrest bail. Further, the accused/petitioner is the sole earning member of the entire family and in the event of his arrest, his entire family will suffer. Accordingly, the learned counsel for the petitioner prayed for granting the accused/petitioner with the privilege of pre-arrest bail.

In this context, the learned Additional Public Prosecutor, Ms. T. Jini, has submitted that the I.O. has recorded the statements of the witnesses and the medical report is also collected by the I.O. and as per the medical report, the injury sustained by the informant/victim is of simple in nature caused by sharp object. Further it is submitted that as per the note of the I.O., it reveals that they have collected the CCTV footage and the statement of the witnesses are also been recorded. However, the weapon, which was used in the commission of the offence, has not yet been recovered.

The learned counsel appearing on behalf of the informant/victim, Mr. J. Riram, has submitted that it is a fact that both the victim and the accused/petitioner were friends and the accused/petitioner is a tenant under him and it is also a fact that on the day of incident, the victim along with one of his friend went to the Bar, where the accused/petitioner was already there, and they had alcohol at that time. But, suddenly after some altercation, the accused/petitioner took a long sharp dao and tried to assault the Manager of the Bar and when the present informant/victim tried to stop him and in that process, the accused inflicted injury on his person and he sustained grievous injuries on his head as well as near the abdomen. Further it is submitted by the learned counsel for the informant/victim that if the accused/petitioner is granted

with the privilege of pre-arrest bail, in that event, there is every possibility of threatening or hampering the investigation of the case. Accordingly, it is prayed that the accused/petitioner should not be granted with the privilege of pre-arrest bail.

After hearing the submissions of learned counsels of both sides and also on perusal of the Case Diary, it appears that the case was registered under Section 326 of the Indian Penal Code and it seems that the victim himself lodged the F.I.R. after 6-7 hours later of the incident, which otherwise reveals that he was not admitted in the hospital for the injuries sustained by him. In the same time, considering the progress of the investigation and also considering the medical documents and injuries sustained by the victim/informant, I find that custodial interrogation of the present accused/petitioner is not necessary in this case therefore, I find it a fit case to extend the privilege of pre-arrest bail to the accused/petitioner.

Accordingly, it is provided that in the event of arrest of the accused/petitioner, namely, Shri Biri Kama, in connection with Nirjuli P.S. Case No. 08/2023, under Sections 341/326/506 of the Indian Penal Code, corresponding to G.R. No. 91/2023, he shall be enlarged on pre-arrest bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the arresting authority, subject to the following conditions:

- (i) that the petitioner shall appear before the Investigating Officer of the case within a period of 1 (one) week from today;

- (ii) that the petitioner shall fully co-operate with the investigation of the case and shall appear before the Investigating Officer as and when required in connection with the investigation of the aforesaid P.S. Case; and
- (iii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

The anticipatory bail application stands disposed of in terms above.

The Case Diary be sent back.

JUDGE

Comparing Assistant