

GAHC040001882023



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

Case No. : AB 6/2023

1:Tamar Kodak @ Kumar
S/o Mr. Pergam Kodak,
Resident of Transport Colony Daporijo, PO and PS Daporijo, Dist. Upper Subansiri,
Arunachal Pradesh.
Phone No. 918798602268

VERSUS

1:THE STATE OF AP
Through Public Prosecutor.

Advocate for the Petitioner : Vijay Jamoh

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 22.02.2023

Heard Mr. V. Jamoh, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State respondent.

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 Daporijo P.S. Case No. 02/2023, under Sections 448/34 of the Indian Penal Code *read with* Section 3 of the PDPP Act.

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

It is submitted by the learned counsel for the petitioner, Mr. V. Jamoh, that the accused/petitioner has not committed any such offence as alleged in the F.I.R. He has stayed in the said land for more than 11 years without any objection from any corner. In that regard, he also received one Show Cause Notice from the concerned authority and a representation was filed in response to the said Show Cause Notice by his wife on 20.01.2023. Apart from that, the present accused/petitioner is undergoing medical treatment. He is ready to co-operate with the I.O. in the further investigation of the case if he is granted with the privilege of pre-arrest bail.

In this context, the learned Additional Public Prosecutor, Mr. T. Ete, has submitted that this is not the first offence when the accused/petitioner have encroached the government land. From the F.I.R. itself, it reveals that on 09.12.2022, the present accused/petitioner entered into the same quarter and also warned the family member of the informant and on the basis of which, he was arrested in connection with the said case and was released on bail. But, subsequently, he again committed the same offence and for which, the present F.I.R. had to be lodged on 04.02.2023. The learned Additional Public Prosecutor further submitted that the present accused/petitioner is a habitual offender and

the earlier case, which was registered on 10.12.2022 has already been Charge-Sheeted and the Case Diary also reveals sufficient incriminating materials against the present accused/petitioner. Accordingly, the learned Additional Public Prosecutor has submitted that this is not a fit case where the accused/petitioner can be granted with the privilege of pre-arrest bail and therefore, raised objection in this regard.

After hearing the submissions of learned counsels of both sides, I have perused the Case Diary and the annexures, which were annexed along with the Case Diary as well as in the petition.

It is the admitted fact that this is not the first offence of the present petitioner. He has involved in the similar kind of offence for the same land of the government quarter and for which, the earlier case was registered against him and the same has also been Charge-Sheeted against him. Further, from the materials available in the Case Diary, it is seen that the I.O. has collected sufficient incriminating materials against the present accused/petitioner. It is also seen that even after the issuance of Show Cause Notice, the present accused/petitioner has not taken any steps to vacate the premises of the quarter, which has been occupied illegally.

So, considering the conduct of the accused/petitioner and the nature of offence, I find that the custodial interrogation of the present accused/petitioner may be necessary in this case and therefore, I find that this is not a fit case where the privilege of pre-arrest bail can be extended to the accused/petitioner at this stage and accordingly, the present anticipatory bail application seeking

pre-arrest bail for the accused/petitioner- Shri Tamar Kodak @ Kumar is hereby stands rejected.

The anticipatory bail application stands disposed of in terms above.

The Case Diary be sent back.

JUDGE

Comparing Assistant