

GAHC040004912023



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

Case No. : BA 42/2023

1:Nur Alom Mojumder
S/o Late Abdul Goni Sarkar,
R/o Village Barkalia Goladighi, PO Barkalia Shershow, PS Fakirganj, Dist. Dhubri,
Assam.

VERSUS

1:THE STATE OF AP
Represented by the Learned Public Prosecutor, Arunachal Pradesh.

Advocate for the Petitioner : M H Laskar

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 18-04-2023

Heard Mr. M. H. Laskar, learned counsel for the applicant. Also heard Mr. G. Tado, learned Additional Public Prosecutor for the State respondent.

This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/applicant, who has been languishing in jail since 21.01.2023, in connection with Yingkiong P.S. Case No. 03/2023, registered under Sections 342/363/363A91)/365/369 of the Indian Penal Code.

It is submitted by the learned counsel for the applicant, Mr. M. H. Laskar, that the accused/applicant is not at all involved in the alleged offence as stated in the FIR. It is further submitted that on the day of the incident, the accused/applicant was helping the boy to search for his parents, who was loitering near his house, but he could not find anyone, and out of love and affection, he provided some biscuits to the boy. After some time, a person came and took away the boy as he knew him. Thereafter, when the accused/applicant was about to leave his room to go to nearby place in search of work, police came and arrested him in connection with Yingkiong P.S. Case No.03/2023 dated 21.01.2023, since then he is in custody.

He further submitted that the police after completion of the investigation has filed charge-sheet vide C.S. No.06/2023 dated 31.01.2023, under Sections

342/363 of the IPC and further observed that the offence u/s 363A(1)/365/369 IPC were not found established against the petitioner.

The learned counsel for the applicant also relied on the decision of the Hon'ble Supreme Court in ***Rasiklal vs. Kishor Khanchand Wadhawani*** reported in AIR 2009 SC 1341, wherein it has been held that "the right to claim bail granted by section 436 Cr.P.C. in a bailable offence is an absolute and indefeasible right. In a bailable offence, there is no question of discretion in granting bail as the words of section 436 Cr.P.C. are imperative. As such, the applicant has an absolute and indefeasible right to be release on bail." Accordingly, it is submitted that considering the nature of offence under which he is charge-sheeted and length of detention, he should be enlarged on bail.

On the other hand, Mr. G. Tado, learned Additional Public Prosecutor, has submitted that considering the length of detention undergone by the accused/applicant, and the fact that sections 342/363 IPC are bailable in nature, thus, the accused/applicant may be enlarged on bail.

Considering the submissions of learned counsels for both sides and also considering the fact that sections 342/363 IPC are bailable in nature and further considering the length of detention already undergone by the accused/applicant, I find it prudent to allow the accused/applicant to go on bail.

Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Judicial Magistrate First Class, Upper Siang,

Yingkiong, the accused/applicant, namely, Shri Nur Alom Mojumder, be enlarged on bail, subject to the following conditions:

- (i) that the applicant shall make himself available for interrogation by the Investigating Officer as and when required;
- (ii) that the applicant 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; and
- (iii) that the applicant shall not leave the jurisdiction of the learned Judicial Magistrate First Class, Upper Siang, Yingkiong, without prior permission.

In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant