

GAHC010001312023



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

Case No. : AB/125/2023

MD. IMANUL HOQUE @ MD. INAMUL HOQUE
S/O MD. ARMAN ALI,
R/O TARAGAON,
P.S.- SIPAJHAR,
DIST.- DARRANGI, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

19.01.2023

Heard Mr. H.R.A. Choudhury, learned senior counsel assisted by Mr. I.U. Choudhury, learned counsel for the petitioner and Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Md. Imanul Hoque @ Md. Inamul Hoque has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Sipajhar Police Station Case no. 426/2022, registered under Sections 448/341/326/307/34, Indian Penal Code [IPC] for the second occasion after rejection of his earlier bail application, A.B. no. 3505/2022 by an order dated 13.12.2022 by this Court after perusal of the materials in the case diary, produced on that date by the learned Additional Public Prosecutor.

3. The First Information Report [FIR] was lodged before the In-Charge, Bura Police Out Post on 26.09.2022 by the informant alleging *inter alia* that at around 11-30 p.m. on 25.09.2022, he had come back to his residence from Guwahati and called his wife by knocking at the door. Then, the accused no. 1 named in the FIR i.e. the petitioner came out from inside the house with the informant's wife. Both of them grabbed the informant and after assaulting him by a sharp weapon in his neck, fled away from the place. Due to such assault, the informant fell down on the ground soaked in blood. On raising alarm by him, the neighbourhood people gathered at the place. Thereafter, the informant was admitted in a hospital with the help of his elder brother and some villagers.

4. Mr. Choudhury, learned senior counsel for the petitioner has submitted that the allegation made in the FIR regarding assault on the informant at his residence is absolutely false, baseless and concocted. The petitioner is a grocery shop owner whose grocery shop is situated near the house of the informant. It was the informant who introduced his wife i.e. the accused no. 2 in the FIR, to take grocery articles from the shop of the petitioner. As for about 3/4 months, the grocery bills were not paid by the informant and his wife to the petitioner, the petitioner used to ask the balance amount from the wife of the informant as the informant used to stay outside. According to the petitioner, he on the last occasion had used some harsh words in claiming the balance amount from the wife of the informant. Due to such balance, the wife of the informant used to pester the informant to clear the balance amount owed to the petitioner. It was on that ground the informant suspected illicit relationship of his wife with the petitioner. Mr. Choudhury has further submitted that the wife of the petitioner has already filed a complaint before the Court of learned Chief Judicial

Magistrate, Darrang, Mangaldai on 01.10.2022 and the same has been registered as C.R. Case no. 647/2022. In the complaint case, C.R. Case no. 647/2022, the wife of the informant had alleged that at around 11-30 p.m. on 25.10.2022, her husband i.e. the informant came to the house and was loitering outside. Having seen her husband i.e. the informant loitering outside the house, he was called by her to the house and was asked the reason for such loitering. Then, an altercation ensued between the two and the informant asked his wife to go out of the house and also assaulted her.

5. The previous bail application, A.B. no. 3505/2022 came up for consideration on 13.12.2022 and on that date, the concerned case diary was produced by the learned Additional Public Prosecutor for perusal of the Court. Upon perusal of the materials in the case diary, this Court rejected the prayer for pre-arrest bail under Section 438, CrPC. The relevant excerpts of the order dated 13.12.2022 reads as under :-

“3. The informant in the First Information Report [FIR], lodged on 26.09.2022, has named the petitioner and his own wife as accused. As per the FIR, when the informant knocked the door of his house at about 11-30 p.m. on 25.09.2022, the petitioner and his wife came out from inside the house and by grabbing him, assaulted him by a sharp weapon in his neck.

4. Mr. Hoque, learned counsel for the petitioner has submitted that the wife of the informant has already lodged a complaint alleging that the story made in the FIR is a concocted one and it is the informant who had cut his neck himself.

5. Mr. Sarma, learned Additional Public Prosecutor who has received the case diary, has submitted that as per the injury report of the injured/informant, the injured/informant had sustained one injury in his neck, which was caused by reportedly a sharp weapon.

6. The statements of the independent witnesses, available in the case diary, go to indicate that the informant used to be outside his place of residence most of the time due to his occupation. The witnesses have further stated that the petitioner used to

visit frequently to the house of the informant in the absence of the informant, to meet the informant's wife and their conducts were suggestive of an illicit relationship between the two. The independent witnesses have further stated that on hearing commotion on the date of the alleged incident, they reached the residence of the informant and found the informant lying on the verandah of the house with wound in his neck and the wife of the informant was trying to cover the wound with a piece of cloth. The materials in the case diary, thus, go to indicate clearly that the assault was made by a sharp weapon in the neck of the informant by the petitioner.

7. Having regard to the fact situation obtaining the case in hand in its entirety, this Court is of the considered view that this is not a fit case to extend the benefit of pre-arrest bail under Section 438, CrPC to the petitioner. Consequently, the prayer for pre-arrest bail under Section 438, CrPC of the petitioner stands rejected.”

6. It has been categorically averred in the instant application, preferred for the second time, that this Court while rejecting the previous bail application, A.B. no. 3505/2022 did not consider the case diary properly and did not believe the grounds urged by the petitioner.

7. With regard to the second ground urged in this application as regards the complaint case instituted by the wife of the informant, it is noticed that while considering the previous bail application, A.B. 3505/2022, the matter of institution of the complaint by the wife of the informant against him was urged with the submission that it was the informant who had cut his neck himself. In so far as the first ground urged regarding the incident/events related to pending bills of grocery is concerned, this Court is of the considered view that the same cannot be a ground available to the petitioner to be urged in the instant bail application, preferred for the second time, for re-consideration of the earlier order dated 13.12.2022, which was passed upon consideration of the materials in the case diary.

8. It is settled that after rejection of application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered

with or where the earlier finding has become obsolete.

9. In such view of the matter, the instant bail application under Section 438, CrPC, referred for the second time, lacks merit to be entertained. Consequently, the same stands rejected.

JUDGE

Comparing Assistant