

GAHC010001322023



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

Case No. : Bail Appln./55/2023

FOZAL HOQUE@FOZOL HOQUE
S/O- MEHER ALI,
R/O- HAKAMA PART V, BELTOLI,
P.S- BILASIPARA, DIST- DHUBRI, ASSAM, PIN-783348

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MS. N NASRIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 20-01-2023

Heard Mr. N.J. Dutta, learned counsel for the accused-petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioner viz. Fozal Hoque @ Fozol Hoque has prayed for his release on bail in connection with Bilasipara Police Station Case no. 265/2022, registered for offences under Sections 447/427/325/326/302/34, Indian Penal Code [IPC] for the second occasion after rejection of the earlier bail application, B.A. no. 3423/2022 by order dated 21.12.2022.

3. After institution of the First Information Report [FIR], on 22.08.2022, a number of accused persons allegedly involved in the incident dated 21.08.2022 were arrested. They

were produced before the Court of learned Sub-Divisional Judicial Magistrate [M], Bilasipara seeking their remand. It is stated that the accused-petitioner was remanded to police custody on 09.11.2022, on his surrender before the investigating authority on 08.11.2022.

4. In the FIR, the informant has specifically named 12 persons as accused along with 30 nos. of unknown miscreants, who were allegedly involved in the incident of attack on the members of the informant's side at around 11-00 a.m. on 21.08.2022. Specific allegation was made to the effect that a number of accused persons had assaulted the informant's elder brother, Sapil Uddin Sk. on his head. As a result, Sapil Uddin Sk. sustained grievous injuries on his head. Allegations were also made to the effect that the informant's nephew named Ikramul Hoque and Akinur Hoque were also assaulted by the accused persons. The incident had allegedly occurred in connection with curving out of a passage through the land allegedly belonging to the informant's side. The name of the accused-petitioner has figured as accused no. 10 [A-10] in the FIR. Sapil Uddin Sk., who was allegedly assaulted in the incident, breathed his last after few days of treatment in the Hospital. Mr. Sarma, learned Additional Public Prosecutor has received the case diary. From the case diary, it has emerged that Sapil Uddin Sk. [since deceased] had specifically identified the accused-petitioner as one of the assailants, who had assaulted him.

5. The learned Additional Public Prosecutor has produced the case diary. From the materials in the case diary, it appears that the statements of the vital witnesses have already recorded and there is sufficient progress in the investigation.

6. It is noticed that similarly situated co-accused persons who were also arrested in connection with Bilasipara Police Station Case no. 265/2022, have already been released on bail by order dated 27.10.2022 passed in B.A. no. 2417/2022 [Sultan Ali Ahmed @ Sultan Ali vs. State of Assam] and by order dated 27.10.2022 passed in B.A. no. 2807/2022 [Shahjahan Ali @ Sahjahan Ali and 2 (two) others vs. State of Assam].

7. Having regard to the progress made in the investigation and the facts that the co-accused persons have already released on bail and the accused-petitioner has spent 72 days in custody, this Court is of the considered view that further custodial detention of the

accused-petitioner is not necessary for the purpose of carrying out further investigation of the case and his release on bail, at this stage of investigation, is unlikely to bring any adverse effect in the further investigation of the case, provided he continues to extend his assistance and co-operation in the further investigation of the case.

8. Accordingly, it is directed that the accused-petitioner shall be released on bail on furnishing a bail bond of ₹ 1,00,000/- with two local sureties of the like amount to the satisfaction of the learned Sub-Divisional Judicial Magistrate [M], Bilasipara, subject to the conditions that :-

[i] the accused-petitioner shall co-operate with the investigation and make himself available for interrogation whenever required by the Investigating Officer [I.O.] of the case;

[ii] the accused-petitioner shall not, directly or indirectly, make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

[iii] the accused-petitioner shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

[iv] the accused-petitioner shall maintain law and order and he shall not commit an offence similar to the offence of which he is accused, or of the commission of which he is suspected; and

[v] the accused-petitioner shall regularly remain present during the trial and co-operate the Court to complete the trial for the above offences, if charge-sheeted in the case.

9. The bail application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant