

GAHC010001722023



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

Case No. : AB/31/2023

JIYABUR RAHMAN
S/O- ALI AKBAR,
R/O- HATIKHUTI,
P.S- KACHUA,
DIST- NAGAON , ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 17-02-2023

Heard Mr. U.U. Ahmed, learned counsel for the petitioner and Ms. S.H. Borah, 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. Jiyabur Rahman has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Kachua Police Station Case no. 121/2022, registered for offences punishable under Sections 120B/420/489A/489C/489E, Indian Penal Code [IPC] for the second occasion after rejection of his earlier bail application, A.B. no. 3022/2022 by an order dated 28.11.2022 after perusal of the materials in the case diary.

3. As per the First Information Report [FIR], lodged on 07.09.2022, on receipt of a source information, which resulted into a General Diary Entry no. 118 dated 07.09.2022, to the effect that activities of illegal business of fake Indian currency note [FICN] were going on in the house of the petitioner at Hatikhuti village, a team of police personnel raided the house. During the raid, three accused persons viz. [i] Jalal Uddin, [ii] R. Vanlalruata, and [iii] Mrs. Zoramchhani, were apprehended and one suspected FICN making machine, 103 nos. of suspected FICN of denomination of Rs. 500/- , and other articles were seized.

4. In the pre-arrest bail application, preferred for the 2nd occasion, the learned counsel for the petitioner has urged that on the earlier occasion, the report as regards the alleged fake Indian currency notes [FICN] seized in connection with the case was not available.

5. Ms. Borah, learned Additional Public Prosecutor has produced the case diary. Along with the case diary, the Investigating Officer [I.O.] has forwarded a bunch of alleged fake Indian currency notes [FICN], 103 in nos. The I.O. of the case in his forwarding letter conveyed that the said 103 nos. of fake Indian currency notes [FICN] and one FICN making machine were seized from the house of the petitioner.

6. When this Court considered the previous pre-arrest bail application on 28.11.2022, rejected the same after observing as under :

“I have perused the materials in the case diary including the statements of the independent witnesses. A number of independent witnesses, in their statements recorded under Section 161, CrPC, have stated that the three persons were apprehended as well as the FICN making machine and 103 nos. of FSIC were recovered from inside the house of the petitioner. The independent witnesses have further stated that when the raid was made, the petitioner and few others fled away from inside the house. The arrested accused person, Jalal Uddin had also made attempt to run away from the place but he was caught after being chased for a distance by the police personnel. The three arrested accused persons, in their statements, have implicated the petitioner to be involved in the illegal activities of making FICN.”

7. 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. The grounds cited in this second application on behalf of the petitioner do not appear to be of any substance for re-consideration of the earlier order dated 28.11.2022 passed in A.B. no. 3022/2022.

8. Having regard to the observations made in the order dated 28.11.2022 and considering the fact that 103 nos. of fake Indian currency notes were seized along with one FICN machine to make FICNs, this Court does not find any good and sufficient reason to re-consider the earlier order dated 28.11.2022 passed in the previous bail application, A.B. no. 3022/2022 to extend the benefit of pre-

arrest bail to the petitioner under Section 438, CrPC.

9. Consequently, the instant pre-arrest bail application of the petitioner is rejected.

JUDGE

Comparing Assistant