

GAHC010002032023



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

Case No. : WP(C)/134/2023

MD. FAKHRUL ISLAM
S/O- LATE MD. RASMAN ALI,
PERMANENT RESIDENT OF VILLAGE EAST HAITORKJHA UNDER
P.S- PATHARKANDI,
DIST- KARIMGANJ, ASSAM, PIN-788724

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPARTMENT, DISPUR, GUWAHATI-6

2:DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-07

3:OFFICER IN CHARGE

KARIMGANJ SADAR P.S

KARIMGANJ
ASSAM
PIN-78871

Advocate for the Petitioner : MR. N H MAZARBHUIYAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

23-01-2023

Heard Ms. L. Wajeeda,, learned counsel for the petitioner whereas the State is represented by Shri D. Nath, the learned Senior Govt. Advocate, Assam.

The instant petition has been filed under some peculiar facts and the relief is also extraordinary.

The petitioner alleges that he was detained in connection with Patharkandi P. S. Case No. 10/2022 under Section 409 of the Indian Penal Code. However, he claims that this Court had granted pre-arrest bail vide order dated 14.09.2022 in AB Case No. 2337/2022. The allegation of the petitioner is that during his detention in the Police Station, some of his belongings, namely, (1) one Woollen Sherwani (worth Rs. 10,000/-), (2) one Woollen Blanket (worth Rs. 2,000/-), (3) one Tiffin Carrier of Steel (Rs. 800) and some medicines were retained in the Police Station which however was not returned even after submitting a representation. Therefore, the present writ petition has been filed.

While the learned counsel for the petitioner submits that directions may be given to return the aforesaid articles, Shri Nath, learned Senior Govt. Advocate however submits that the said claims are absolutely incorrect inasmuch as though it is a fact that the petitioner was brought to custody, he had escaped from the Police Station and had later on placed the order of this Court dated 14.09.2022 in the police station. He denies that any articles of the petitioner were retained by the Police Station.

This Court vide the order passed on 09.01.2023 after being apprised that a pen drive was produced in connection with an earlier writ petition (habeas corpus), the said was directed to be examined. It may be mentioned that while the petitioner had absconded from the Police Station, the wife of the petitioner had also filed WP(CrI) No. 2/2022 praying for writ of *habeas corpus* for her husband which however was rendered infructuous.

Today, Shri Nath, learned Senior Govt. Advocate has submitted that the necessary information was there in the pen drive which was retrieved from the earlier recordings.

The learned counsel for the petitioner was given an access to the recording from which it appears that the petitioner was seen to be leaving the station wearing a dress and a

blanket was seen to be in the premises. It however cannot be said with certainty as to who the owner of the blanket was. In any case, the allegations made are essentially factual in nature which are disputed by the contesting parties.

Further, the conduct of the petitioner is itself doubtful inasmuch as while a petition for *habeas corpus* was filed by the wife, the petitioner himself had filed an application for anticipatory bail. A Writ Court exercise jurisdiction which is equitable in nature whereas the conduct of the parties is a paramount importance.

In the present case, this Court is of the opinion that the conduct of the petitioner is itself doubtful and in any case disputed questions of fact had been raised.

In that view of the matter, the relief is entitled to by the petitioner and accordingly, the writ petition stands dismissed.

JUDGE

Comparing Assistant