

GAHC010002612023



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

Case No. : Bail Appln./57/2023

MITHUN RAY
S/O MONI RAY R/O VILL. BILASIPARA WARD NO. 5 P.S BILASIPARA DIST
DHUBRI ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 06-01-2023

Heard Mr. M. Khan, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By the application under Section 439, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Mithun Ray has prayed for his release on bail in connection with Bilasipara Police Station Case no. 1185/2018 [G.R. Case no. 1714/2018], registered under Sections 448/364A, Indian Penal Code [IPC].

3. The petitioner was an accused in Bilasipara Police Station Case no. 1185/2018, registered for the offences under Sections 448/364A, IPC. After completion of investigation in

connection with Bilasipara Police Station Case no. 1185/2022, the Investigating Officer [I.O.] of the case submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 567/2018 dated 28.10.2018 finding a *prima facie* case against the accused-petitioner for the offences under Sections 448/364A/506, IPC. On submission of a charge-sheet in connection with G.R. Case no. 1714/2018, the case stood committed to the Court of the learned Sessions Judge, Bilasipara as the offence under Section 364A, IPC is extremely triable by the Court of Sessions. On receipt of the case record on commitment, the case stood transferred to the Court of learned Additional Sessions Judge, Bilasipara [the trial court] for disposal. On receipt of summons, for appearance, the petitioner appeared before the learned trial court on 12.08.2022 and preferred an application for bail. After consideration, the petitioner was provisionally allowed to remain on previous bail, by order dated 12.08.2022, till the next fixed date with a direction to the petitioner to produce the bailor on the next date of listing i.e. 22.09.2022. On the next date, 22.09.2022, the petitioner was absent with steps through his learned engaged counsel showing cause of absence and the learned trial court allowed the prayer, fixing 29.11.2022 for appearance of the petitioner and his bailor. On 29.11.2022, the petitioner was found absent without any steps and the learned trial court finding his absence without any steps, issued Non-Bailable Warrant of Arrest [NBWA] against the absentee accused i.e. the petitioner. The petitioner has averred that the Bar Association of Bilasipara Court proceeded with strike against the court of learned Additional Sessions Judge, Bilasipara w.e.f. 07.11.2022 and the same is continuing till date. None of the advocates is appearing before the Court of learned Additional Sessions Judge, Bilasipara and due to the ongoing strike, the petitioner did not appear on 29.11.2022 with the bona fide belief that the learned trial court would not proceed with the case due to strike called by the advocates.

4. On a query to the learned counsel for the petitioner, he has submitted that the reason for boycotting the court of learned Additional Sessions Judge, Bilasipara by the learned advocates of Bilasipara Bar Association has not been mentioned in the instant application. On a further query, the learned counsel for the petitioner has submitted that the learned Court of Sessions is at Dhubri.

5. The learned Additional Public Prosecutor has submitted that the location of the Court

of Sessions is at a distance of in between 40-50 kilometers whereas the distance from Bilasipara to Guwahati is about 190 kilometers. The Court of Sessions Judge at Dhubri is in functioning and it is not impacted by any kind of protest of advocates.

6. In view of aforesaid fact situation obtaining in the case, this bail application is not entertained, reserving the liberty to the accused-petitioner to approach the Court of Sessions, Dhubri of seeking appropriate remedy.

JUDGE

Comparing Assistant