

GAHC010007672023



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

Case No. : AB/131/2023

BIKASH CH. BOSE @ BIKASH BOSE
S/O LATE SUBAL CH. BOSE,
VILL.- GOLAKGANJ BAZAR,
P.S.- GOLAKGANJ, DIST.- DHUBRI, ASSAM.

VERSUS

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

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 20-02-2023

Heard Mr. M. Khan, learned counsel for the applicant. Also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam for the State respondent.

2. Apprehending arrest in connection with Golakganj P. S. Case No.391/2022, under Sections 14/15 of the Assam Game and Betting Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant, namely, Bikash Ch. Bose @ Bikash Bose for grant of pre-arrest bail.

3. It is to be noted here that the aforesaid case has been registered on the basis of one F.I.R., lodged by one Aparna Talukdar on 20.10.2022, to the effect that on that day, at about 1.40 pm, she along with her staff, visited the house of one Saiful Islam and found the said person selling tickets of *Teer Khel* from the verandah of his house. Then, seeing the police personnel, some of the youths fled away and they have apprehended one person from the place of occurrence, who was selling *Teer* tickets. They also seized two numbers of *Teer* chart, two small cartoons, six numbers of used tickets, used ticket books, etc and a cash amount of Rs.700/-.

4. Mr. Khan, learned counsel for the applicant, submits that this is the second application preferred by the applicant on a new ground. Mr. Khan further submits that the earlier application preferred by the applicant was dismissed by this Court vide order dated 07.12.2022, in AB No.3525/2022. Mr. Khan further submits that the ground for filing this application is that the Government has taken a policy decision and also issued a Standard Operating Procedure (SOP) for withdrawing cases where punishment prescribed is up-to 3 years or with fine and that the Sections under which the present case has been registered is punishable up-to 3 years and, as such, the applicant has approached this Court by filing the present application for granting him the privilege of pre-arrest bail.

5. On the other hand, Mr. Lahkar, learned Additional Public Prosecutor, Assam has produced the case diary before this Court and vehemently opposed the application on the ground that withdrawal of cases will arise only when investigation of the case is completed and *charge-sheet* is laid before the learned Court below and as the investigation of the present case is still going on and *charge-sheet* is yet to be submitted, the applicant cannot avail the benefit of the aforesaid SOP issued by the Government. Mr. Lahkar further submits

that the earlier bail application was rejected after perusing the case diary and the ground assigned by the applicant for filing this second application is not satisfactory and, therefore, Mr. Lakhar contended to dismiss the same.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the Case Diary produced before this Court with the assistance of Mr. Lahkar, learned Additional Public Prosecutor, Assam.

7. It appears that the I/O has collected sufficient incriminating materials in the case diary against the applicant and after perusing the same, the earlier anticipatory bail application was rejected by this Court. Further, it appears that the Government has issued the SOP indicating therein that the Government has decided to withdraw the cases where the punishment prescribed is up-to three years or with fine. Moreover, it is also indicated that a general authority is to be issued by the Judicial Department to all the Public Prosecutors/Addl. Public Prosecutors to move appropriate application/petition under Section 321 Cr.PC before the respective Courts for withdrawal of cases covered under the policy pending in their respective districts/sub-divisions. But, the present case is yet to be charge-sheeted as investigation is still going on and question of withdrawal will arise only when the case is pending before the Court for trial after submission of *charge-sheet*.

8. Having carefully considered the submissions made by the counsel for both sides and also considering the facts and circumstances of the case as well as the ground for filing the second application, this Court is of the view that the ground, so assigned by the learned counsel for the applicant, is not at all satisfactory so as to entertain this second bail application.

9. Accordingly, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be extended to the accused/applicant and therefore, the same is dismissed.

Case diary be returned.

JUDGE

Comparing Assistant