

GAHC010010812023



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

Case No. : Bail Appln./207/2023

ABDUL JABBAR
S/O LATE FAZAL ALI
R/O VILL- BAIKHUN GAON
P.O. DHALIGAON, P.S. DHALIGAON
DIST. CHIRANG, ASSAM
PIN-783385

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

08.02.2023

1. Heard Mr. M. Biswas, learned counsel for the petitioner as well as Mr. B.B.Gogoi, learned Addl. P.P. appearing for the State respondent.
2. The petitioner, namely, Abdul Jabbar, has filed an application under

Section 439 Cr.P.C. with prayer for bail as he has been languishing in the jail since 12.09.2022 in connection with PRC Case No. 86/2022, corresponding Dhaligaon P.S. Case No. 225/2021 under Sections 120(B)/302/307/325/427 IPC.

3. I have considered the submissions at the bar.

4. The FIR unfolds that on 23.08.2021 at about 10:30 P.M. when the informant along with Abdul Malek, Suraj Ali and Maidul Islam Mauli went out to inspect their oil tankers near I.O.C. Gate No. 2 in a TATA NEXON AS 26B 9078, suddenly a jeep bearing Registration No. AS-19M-3032 belonging to accused No. 1 named in the FIR followed by an Alto approached with excessive speed and hit the informant's vehicle. Thereafter, the accused persons named in the FIR armed with iron rods and other dangerous weapons attacked the informant as well as his companions. Abdul Malek died at the spot and Suraj Ali and Maidul Islam Mauli sustained severe injuries.

5. It is submitted on behalf of the petitioner that both the parties have an acrimonious relationship. Many family members related to the informant are undergoing life imprisonment in connection to an incident of homicide.

6. It is also submitted on behalf of the petitioner that the petitioner was granted interim pre-arrest bail and he appeared before the I.O. and bail bonds were executed. Thereafter, after a charge-sheet was laid, the petitioner appeared before the Court of commitment and due to an oversight the petitioner was held to be an absconder and he was forwarded to custody. The copy of the charge-sheet has been added along with the petition which clearly depicts that the petitioner was not an absconder and he was on bail. At present, the petitioner has been languishing in the jail since 12.09.2022.

7. The learned Addl.P.P. has raised objections stating that not a single witness has been examined and there are incriminating materials against the

petitioner in the case diary. The statements of the witnesses under Section 161 Cr.P.C. clearly depicts that the petitioner is complicit.

8. It is also submitted on behalf of the petitioner that all the co-accused has been enlarged on bail.

9. The learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in ***Kamaljit Singh Vs. State of Punjab and Ors.*** reported in (2005) 7 SCC 226 wherein it has been observed that "***In the facts and circumstances of the case we are of the view that it is an appropriate case in which the application of the Appellant for grant of anticipatory bail ought to have been allowed, particularly when on similar allegations the remaining two accused have been granted the benefit of anticipatory bail. In the circumstances the appeal is allowed and the Appellant is directed to be released on bail in the event of arrest or surrender on his furnishing bail bonds to the satisfaction of the arresting officer or the Court, as the case may be, subject to the conditions laid down in Section 438 CrPC.***"

10. It is also submitted that in the witnesses column the names of 36 witnesses have been enlisted and if all the witnesses are to be examined, before granting bail, then petitioner will be highly prejudiced.

11. In view of my foregoing discussions, petition is allowed.

12. The petitioner, namely, Abdul Jabbar is enlarged on bail in connection with PRC Case No. 86/2022, corresponding Dhaligaon P.S. Case No. 225/2021 under Sections 120(B)/302/307/325/427 IPC, on furnishing bail bond of Rs.40, 000/- with one suitable surety of like amount to the satisfaction of the learned Jurisdictional trial Court under the conditions that:-

(1) the petitioner will not exercise threats to witnesses; and

(2) the petitioner will not leave the jurisdiction of the trial Court without prior permission

13. Send back the case diary.

14. The case is disposed of.

JUDGE

Comparing Assistant