

GAHC010022262023



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

Case No. : Bail Appln./403/2023

UMAR FARUK
S/O LT. DILUWAR HUSSAIN R/O VIL. MONIPURTUP P.S RAHA DIST.
NAGAON ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. D BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 20.02.2023

Heard Mr. B.K. Mahajan, learned counsel for the petitioner.
Also heard Mr. R.J. Baruah, learned Addl. P.P. for the State.

2. The petitioner, Umar Faruk, who was arrested on 09.01.2023 in connection with Raha P.S. Case No. 1/2023 under Section 379 IPC read with

section 23 of the Petroleum Act, 1934 and Sections 15(2) and 15(4) of the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962 as amended by Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Amendment Act, 2011 and Sections 3(2)(b) of the Prevention of Damage to Public Property Act, 1984, is seeking regular bail under Section 439 I.P.C.

3. The learned Addl. P.P. has produced the case diary and has opposed the prayer for bail on the ground that the petitioner is strongly suspected to be involved in habitual theft of crude from OIL pipeline by puncturing the oil pipeline.

4. On a perusal of the case diary, it is seen that by damaging crude oil pipeline, which is a public property, large scale pilferage of crude oil was committed. The three incidents in quick succession were as follows:-

- a. Theft of crude oil was committed from pipeline in Nagaon and accordingly, Nagaon PS Case No. 1392/2022 was registered under Section 379 IPC read with Section 23 of the Petroleum Act, 1934.
- b. On 02.10.2022, another incident of theft of crude oil from pipeline was committed in Dharamtul area for which Dharamtul P.S. Case No. 62/2022 was registered under Section 379 IPC read with Section 23(a) of the Petroleum Act, 1934.
- c. Yet another similar theft was committed in Raha on 02.01.2023 and accordingly, Raha P.S. Case No. 1/2023 was also registered under Section 379 IPC read with Section 23 of the Petroleum Act read with Section 15(2) and 15(4) of the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962 as amended by Petroleum and Minerals Pipeline (Acquisition of Right of User in Land)

Amendment Act, 2011 and Sections 3(2)(b) of the Prevention of Damage to Public Property Act, 1984 was registered on 02.01.2023.

5. Although the I.O. strongly suspects that the petitioner is also involved in theft of crude oil, but it is seen that the petitioner is sought to be implicated as he was in touch with one of the prime suspects.

6. Therefore, it appears from the case diary that the I.O. suspects that the petitioner to be involved in theft of crude oil from pipelines, but in view of the nature of materials available against the petitioner, the Court is of the considered opinion that after 42 days in custody, his further custodial detention and interrogation is not warranted.

7. Accordingly, the Court is inclined to release the petitioner, Umar Faruk on bail in connection with Raha P.S. Case No. 1/2023 on his furnishing a bail bond of Rs.1,00,000/- (Rupees one lakh only) with two solvent surety of like amount to the satisfaction of the learned Court of Chief Judicial Magistrate, Nagaon. Out of the two bailors, one should offer his/her immovable property as security for grant of bail.

8. Bail is granted on the following conditions:-

- a) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to Court or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses.
- b) That he shall not obstruct the smooth progress of the trial.
- c) That the petitioner shall not misuse his liberty in any manner.

- d) That the petitioner shall not jump over the bail.
- e) The petitioner shall appear before the Investigating Officer within 15 (fifteen) days from the date of his release and shall continue to so appear once a month thereafter, till his personal appearance is dispensed with or charge-sheet is submitted, whichever is earlier.
- f) If any of the condition for grant of bail is not complied with, and/or if the petitioner is found to be involved in any similar offence, it would be open to the Investigating Officer to move the jurisdictional Court for cancellation of bail and/ or for issuing fresh NBWA against the petitioner.

9. Before parting with the records, it may be stated that the learned counsel for the petitioner has made a submission that by the Repealing and Amending Act, 2016, the whole of Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Amendment Act, 2011 was repealed. Therefore, it was submitted that the default bail would apply on and from 60th day of the date when the petitioner was remanded. The Court does not find any merit in this submission because after the amendment to Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962 was made by virtue of the 2011 Amendment Act, and notified in the official Gazette, the amended provision becomes part of the principle statute. This is apparent because vide Section 4 of the Repealing and Amending Act, 2016, it is provided that *"The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to; ..."*

10. The Application for bail is disposed of.
11. Case diary is returned.

JUDGE

Comparing Assistant