

GAHC010026872023



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

Case No. : AB/425/2023

HASMAT ALI
S/O- LATE JOYNAL ABEDIN, R/O- VILL.- HATIPOTA, P.O. AND P.S.
DHALIGAON, DIST .CHIRANG (BTR), ASSAM

VERSUS

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

Advocate for the Petitioner : MR. D A KAIYUM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

11.04.2023

Heard Mr. D.A. Kaiyum, learned counsel for the petitioner and Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Hasmat Ali has approached this Court seeking the benefit of pre-arrest bail,

apprehending his arrest, in connection with Jogighopa Police Station Case no. 181/2022, registered under Sections 328/392/212/395, Indian Penal Code [IPC] after rejection of his earlier bail application, A.B. no. 3627/2022 by an order dated 03.01.2023.

3. In the course of investigation, a number of accused persons involved with the crime, have been arrested. After a search carried out in the house of the present petitioner on 17.11.2022, the following articles were seized :-

- [i] One PAN Card [original of Hasmat Ali]
- [ii] One gold necklace measuring 10.89 grams
- [iii] One gold ring, 1.54 grams
- [iv] 4 [four] nos. of gold earrings 1.24 grams,
- [v] Earrings gold 2 piece 1.14 grams
- [vi] One Voter ID of Hasmat Ali
- [vii] Cash rupees, Note 100 x 52 = 5,200/-
- [viii] 500 rupees Note 500 x 178 = 89,000/-
- [ix] 200 rupees note 200 x 103 = 20,600/- [total Rs. 1,14,000/-]
- [x] Silver payal measuring 56.96 grams

4. The petitioner's previous pre-arrest bail application, A.B. no. 3627/2022 was considered along with 2 [two] other bail applications, B.A. no. 3461/2022 and B.A. no. 3473/2022 on 03.01.2023 as those applications also arose out of the same Jogighopa Police Station Case no. 181/2022.

5. Mr. Kaiyum, learned counsel for the petitioner has reiterated his submission that the petitioner is only a jeweller and he was not involved in any manner with the commission of the crime at the house of the informant.

6. In the First Information Report [FIR] lodged on 30.10.2022, it has inter alia been alleged that in the night intervening 29.10.2022 and 30.10.2022, an act of dacoity was committed in the house of one Abdul Kader Mazumdar by unknown miscreants. As per the

FIR, in the morning hours of 30.10.2022, Abdul Kader Mazumdar and all other inmates of the house were found sleeping in their beds in unconscious conditions. The household articles were found at sixes and sevens and there was suspicion that the inmates of the house were made unconscious after mixing some intoxicated substance in their food in the previous night.

7. This Court on 03.01.2023, after hearing the learned counsel for the parties and on perusal of the materials available in the case diary, collected during the course of investigation carried out till then, had observed as under :-

“11. I have perused the materials available in the case diary, collected during the course of investigation carried out so far. I have also perused the statements of the arrested accused persons, 7 [seven] in nos. till date, recorded under Section 161, CrPC. I have also perused the statements of the other witnesses whose statements are recorded under Section 161, CrPC. From the materials in the case diary, it has emerged that the inmates of the house of Abdul Kader Mazumdar including Abdul Kader Mazumdar were made unconscious because some substance had been mixed in the meal prepared in the previous night for the family members. One Trofika Sultana was found to be the person who had mixed the substance in the meal prepared in the night of 29.10.2022. The statements of the witnesses go to corroborate the fact that all the inmates of the house of Abdul Kader Mazumdar were found lying in their respective beds in an unconscious state. The materials further go to indicate that the arrested accused persons including the present two accused-petitioners viz. Akhida Khatun and Abdul Hanif Miya were involved in the entire transaction leading to the crime of dacoity and subsequent disposal of the items looted in the act of dacoity. The involvement of the petitioner in A.B. no. 3627/2022 is also found as he was the recipient of the gold/gold ornaments looted from the house of Abdul Kader Mazumdar. Though a number of accused persons involved in the crime have been arrested, the main three accused persons are still at large evading arrest. The materials in the case diary are clearly, suggestive of the fact that the act of dacoity has been committed in a number of places and in an organized manner with the involvement of an organized group.”

8. Mr. Goswami, learned Additional Public Prosecutor has produced the concerned case diary today and I have once again gone through the materials available in the case diary.

9. From the statements of the witnesses recorded under Section 161, CrPC, it prima facie appears that there was involvement of the petitioner with regard to accepting the gold from the arrested accused persons, who committed the crime in the house of the informant.

10. It is settled that after rejection of application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete.

11. Having considered the fact situation obtaining in the case in hand in its entirety, this Court has not found any good and sufficient reason to re-consider the prayer for pre-arrest bail of the petitioner. The grounds cited in this second application on behalf of the petitioner do not appear to be of any substance for re-consideration of the earlier order dated 03.01.2023 passed in A.B. no. 3627/2022. As the instant pre-arrest bail application of the petitioner, preferred for the second occasion, is found bereft of merit, it entails rejection and accordingly, the same is rejected.

JUDGE

Comparing Assistant