

GAHC010028852023



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

Case No. : Bail Appln./493/2023

MONIR UDDIN AHMED @MONIR UDDIN
S/O LATE HARMUZ ALI
VILL- SALAPARA
P.S. LAKHIPUR
DIST. GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, TO THE GOVT. OF ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 15-02-2023

- 1.** Heard Mr. HRA Choudhury, learned Senior Counsel for the petitioner assisted by learned counsel Mr. A.M. Khan. Also heard Mr. B.B. Gogoi, learned Addl. P.P. for State.
- 2.** The petitioner Monir Uddin Ahmed @ Monir Uddin has filed an application under

Section 439 Cr.P.C. with prayer for bail as he has been in custody in since 04.02.2023 in connection with Lakhipur P.S. Case No. 44/2023 under Sections 341/294/506 IPC and subsequently added section 120(B)/307 IPC.

3. It is submitted on behalf of the petitioner that the FIR was lodged after 15 days of the incident which clearly depicts that the FIR has been fabricated. It is also submitted that a case of 307 cannot be made out from the FIR.

4. I have also heard the learned Addl. P.P. for the State. The FIR unfolds that on 15.01.2023 as the informant was distributing *pitha* amongst the people of Koraibari Char and Chatribari Char on the occasion of Bihu, the petitioner restrained him and verbally abused him. Later the informant learnt that the petitioner had a plan to kill him.

5. The learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in *Jage Ram and Others vs State of Harayana*, reported in (2015) 11 SCC 366 wherein it has been held that-

“12. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc.”

6. I have considered the submissions at the Bar. Considering all aspects and in view of my foregoing discussions, petition is allowed.

7. The petitioner is enlarged on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the learned CJM, Goalpara under the conditions that –

- i. the petitioner will refrain from such activities with which he is alleged and
- ii. the petitioner will not exercise threats to witnesses.

JUDGE

Comparing Assistant