

GAHC010037182023



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

Case No. : Bail Appln./610/2023

ABU TAHER ALI @ ABU TAHER
S/O TARAB ALI
VILL- CHENGELIA
P.S. BARPETA ROAD,
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

09.03.2023

Heard Mr. H.A. Ahmed, learned counsel for the accused petitioner as well as Mr. B. Sarma, learned Addl. P.P., Assam for the State respondent.

2. By this petition under Section 439 Cr.P.C., the accused/petitioner, namely

Abu Taher Ali @Abu Taher has prayed for grant of bail in connection **Barpeta Road P.S. Case No. 04/2023 u/s 392/34** of the IPC read with Sections **25(1)(a)/27** of the Arms Act (**GR No. 34/2023**).

3. The case diary as called for is placed before the Court.
4. Mr. H.A. Ahmed, learned counsel for the accused petitioner, submits that the accused petitioner has been in judicial custody for last 59 days since 09.01.2023 on mere suspicion. Mr. Ahmed further submits that no incriminating material was recovered from the possession of the accused petitioner and the seizure list itself reflects that cash amount as well as ammunition were recovered from the possession of co-accused Sridhar Mandal. Therefore, Mr. Ahmed submits that the accused petitioner, if released on bail subject to any condition(s), he undertakes to abide by the same.
5. *Per contra*, Mr. B. Sarma, learned Addl. Public Prosecutor, submits that the case is registered under Section 392/34 of the IPC read with Sections 25(1)(a)/27 of the Arms Act and on the other hand, although the weapon of offence, a gun, has been recovered from the possession of one co-accused person, some other co-accused persons are yet to be arrested. Therefore, Mr. Sarma submits that at the present stage of investigation into the incident which took place after sunset during winter season (January), the bail application of the accused petitioner may not be considered favourably.
6. The FIR lodged by one Dipankar Saha on 07.01.2023 reveals the allegation that on 06.01.2023 at about 6.30 p.m., four unknown miscreants at gunpoint looted Rs.50,000/- in cash from the cash box of his hardware shop and left the scene making blank fires.
7. It is noticed that the accused petitioner has been in judicial custody since

09.01.2023, that is, for 59 days.

8. A perusal of the case diary reveals that in course of investigation it was found that, a gang of 5(five) dacoits including the accused petitioner armed with deadly weapons like pistol committed dacoity at the hardware shop of the informant at about 6.30 p.m. in the month of January, that is, after sunset. While committing the extortion, the accused petitioner and his associates put the informant in fear of instant death or instant hurt by pointing pistol/resorting to blank fire and managed to flee away with a cash amount of approximately Rs.50,000/- from the cash box. There is clear prima facie incriminating material of serious nature against the accused petitioner and some co-accused persons are yet to be arrested. One used ammunition of 7.65 mm and cash of Rs.26,000/- have already been recovered and seized in connection with the case. The investigation is yet to be completed.

9. Therefore, this Court is of the opinion that in the backdrop of facts and circumstances as well as the critical stage of investigation, if the liberty of bail is granted to the accused petitioner, the remaining part of investigation may likely to be adversely affected.

10. For the above stated reasons, the bail application of the accused petitioner stands **rejected**.

Return the case diary.

This disposes of the bail application.

JUDGE

Comparing Assistant