

GAHC010068532023



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

Case No. : AB/1161/2023

SAHED ALI
S/O MD. SAHAJADA HUSSAIN
R/O JORHAT WARD NO. 4 (PART)
P.S. AND DIST. JORHAT, ASSAM
PIN-785001

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P D NAIR

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 12-05-2023

Heard Mr. G. Alam, learned counsel for the applicant. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

2. This application is filed under Section 438 of the Code of Criminal Procedure, 1973, praying for granting pre-arrest bail to the accused/petitioner in connection with Golaghat P.S. Case No. 261/2022, registered under Sections 379/34 of the Indian Penal Code, corresponding to G.R. Case No.549/22.

3. It is submitted by the learned counsel for the petitioner, Mr. G. Alam that the accused/petitioner was earlier granted interim bail by this Court in AB.No.3186/2022, vide order dated 02.11.2022. He also submitted that the accused/applicant had appeared before the Kamarbondha Police Outpost and IO, and recorded his statement on 28.11.2022. Thereafter, the accused applicant was released on bail by furnishing the bail bond dated 28.11.2022. But, after perusal of the Case Diary, it is revealed that, when the said AB No.3186/2022 was taken up for consideration on 16.02.2023, it appeared that recorded statement of the accused/applicant recorded by the IO was not available in the case diary. Thus, his earlier bail application was rejected considering the several incriminating materials available in the Case Diary as well as absence of statement of the petitioner recorded under Section 161 Cr.P.C.

4. The present or subsequent bail application has been filed mainly on two grounds; firstly, the accused/applicant has already appeared before the IO at Kamarbondha Police Outpost and accordingly, his statement was recorded by the IO. Secondly, the materials were already seized from the co-accused namely Bodoruddin Hussain, and the said person had already been granted bail by the learned Magistrate vide order dated 19.10.2022.

5. Further, it is submitted by the learned counsel for the petitioner that the co-accused namely Bodoruddin Hussain is the prime accused, and the petitioner is no way connected in the alleged offence and his name has been mentioned in the case only out of suspicion. However, he is ready to co-operate with the IO in investigation of this case, if he is granted with the privilege of pre-arrest bail.

6. Per contra, Mr. D. Das, learned Additional Public Prosecutor has submitted that as per the case diary, the statement of the accused/applicant has not been yet been recorded under Section 161 Cr.P.C. Further, as per the order dated 11.05.2023, he also made an enquiry from the concerned IO, whether, if any statement of the accused/petitioner was recorded in Kamarbondha Police Outpost. Accordingly, it is intimated by the concerned IO as well as his predecessor that till date no statement has been recorded by the present accused/petitioner, however, one Advocate had appeared before the Police Out-Post in connection with this case.

7. He further relied on the decision of Hon'ble Supreme Court in the case of ***G.R. Ananda Babu vs. The State of Tamil Nadu & Anr.***, arising out of ***SLP(CrI)No.213/2021***, wherein, it has been held that;

"The successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused is absconding and not cooperating with the investigation. The spacious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge."

8. Citing the above judgment, the learned Additional Public Prosecutor has submitted that this is not a fit case, where the prayer for anticipatory bail can be granted, where, the earlier bail application was rejected by this Court, considering the incriminating materials available in the case diary. More so, after enquiry, it has been revealed that no statement of the present petitioner has been recorded by the IO neither in the Kamarbondha Police Outpost nor in the police station.

9. After hearing the submissions made by the learned counsels as well as after perusing the case diary and the order dated 16.02.2022 of this Court, it is seen that the present petitioner is one of the prime accused in this case. More so, there is sufficient incriminating materials' showing his direct involvement in the alleged offence. Though, it is stated that some of the theft items has been recovered from the possession of the other co-accused, but, his involvement or incriminating materials are available in the case diary.

10. Thus, I do not find it a fit case to extend the privilege of pre-arrest bail at this stage. Further, it is also seen that inspite of earlier anticipatory bail order, the accused/petitioner did not appear before the IO to record his statement

under Section 161 Cr.P.C., which is also found to be disobedience of Court's order.

11. In terms of above observation, this anticipatory bail application stands dismissed.

12. Case Diary be return back, if any.

JUDGE

Comparing Assistant