

GAHC010069222023



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

Case No. : AB/1185/2023

RUHUL AMIN LASKAR
S/O KHALIL AHMED LASKAR
VILL- BORHAILAKANDI PART-11, P.O. BORHAILAKANDI, P.S. AND DIST.
HAILAKANDI, ASSAM

VERSUS

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

Advocate for the Petitioner : MR H I CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 19.07.2023

- 1.** Heard Mr. A. S. Tapader, learned counsel for the petitioner, also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State.
- 2.** This case is fixed for delivery of orders today.
- 3.** This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Ruhul Amin Laskar*, who is

apprehending arrest in connection with Hailakandi Police Station Case No. 05/2023, under Sections 341/379/294/326/34 of the Indian Penal Code.

4. The accusation in this case is that on 07.01.2023 one- Sahab Uddin Laskar, lodged an FIR before the Officer-in-Charge of Hailakandi Police Station, *inter alia*, alleging that on 04.01.2023, his brother, namely, Ainul Haque Laskar went out to Katlicherra Bazar for selling and purchasing of betel nuts and while returning from the market, the present petitioner along with three others restrained the brother of the first informant and attacked him with sharp weapons as a result he sustained serious injuries. It is also alleged that the accused persons snatched away cash amount of Rs.35,400/- and a pocket diary from the brother of the first informant. On receipt of the said FIR, Hailakandi Police Station Case No. 05/2023 was registered.

5. On 31.03.2023, the petitioner, namely, *Ruhul Amin Laskar* was allowed to be released on interim pre-arrest bail in the event of his arrest in connection with Hailakandi Police Station Case No. 05/2023 with certain conditions and case diary was called for in the meanwhile.

6. Learned counsel for the petitioner submitted that the petitioner in pursuant to the direction of this Court appeared before the Investigating Officer and he was allowed to go on interim bail as per direction of this Court.

7. On the other hand, learned Additional Public Prosecutor submitted that, in the meanwhile, the Investigating Officer had laid the charge-sheet in Hailakandi Police Station Case No. 05/2023 after completion of the investigation.

8. On 26.06.2023, this Court posed query to learned counsel for the petitioner as well as learned Additional Public Prosecutor as to when interim anticipatory bail has been granted to the petitioner and, if in the meanwhile,

when the charge-sheet has been laid, what course of action are available for the Court considering the application for anticipatory bail.

9. Learned Additional Public Prosecutor citing the Judgment of Hon'ble Supreme Court of India in "**Salauddin "Abdulsamad Shaikh –Vs- State of Maharashtra"** reported in "**(1996) 1 SCC 667**" as well as in "**Bharat Chaudhary and Ors. –Vs- State of Bihar and Ors.**" reported in "**(2003) 8 SCC 77**" submits that though mere filing of the charge-sheet would not put an embargo on the powers of this Court, under Section 438 Cr.P.C. from granting anticipatory bail in appropriate cases, however, the said power is to be exercised taking into consideration gravity of offence and need for custodial interrogation.

10. Learned Additional Public Prosecutor also submits that mere fact that the protection of interim anticipatory bail has been given to the petitioner at initial stage of the consideration of anticipatory bail application would not in itself mean that the petitioner would be entitled to get an absolute protection under Section 438 Cr.P.C.

11. Learned Additional Public Prosecutor fairly submits that to make an interim order of anticipatory bail absolute or to cancel the said interim order would depend on the facts and circumstances of the case. He also submits that in an appropriate case, this Court may also direct the petitioner to surrender before the trial Court and pray for regular bail before the trial court.

12. On the other hand, learned counsel for the petitioner relying on the Judgments of Hon'ble Supreme Court of India in "**Sushila Aggarwal and Ors. –Vs- State (NCT) of Delhi and Anr.**" reported in "**(2020) 5 SCC 1**" as well as in "**Dr. Rajesh Pratap Giri -Vs- State of U.P. and Anr.** Reported in "**MANU/SCOR/10131/2021**" has submitted that the mere fact that an

accused is given relief under section 438 at one stage, *per se*, does not mean that upon filing of the charge-sheet, he is necessarily to surrender and apply for regular bail. It is submitted that an accused who is granted anticipatory bail would continue to be at liberty till the end of the trial unless there are any special or peculiar feature necessitating the Court to limit the tenure of anticipatory bail.

13. Learned counsel for the petitioner has fairly submitted that in circumstances similar to that of the present case when interim anticipatory bail has been granted to the petitioner and in the meanwhile charge-sheet has been laid, this Court has passed different orders under different circumstances, namely, (a) directing the petitioner to appear before the Court below within a particular period of time and thereafter apply for regular bail, if so advised and till that period the interim protection is given to the petitioner (as was done in AB Case No. 1855/2023) (b) making the interim anticipatory bail absolute with certain conditions as was done in AB Case No. 1861/2020 and (c) Cancelling the interim bail in appropriate cases.

14. Learned counsel for the petitioner fairly submits that the discretion of this Court under Section 438 Cr.P.C is wide enough. However, such discretion is to be exercised judicially and mere fact that charge-sheet has been laid, would not put an embargo on the powers of this Court under Section 438 Cr.P.C.

15. Having considered the submissions made by learned counsel for both sides, it appears that, in the instant case, the interim anticipatory bail was granted to the present petitioner by order dated 31.03.2023 and the charge-sheet has been laid in the month of June, 2023 and no occasion has arisen showing that the present petitioner has misused the liberty granted to him during the continuance of the interim anticipatory bail. The fact that without

seeking cancellation of interim anticipatory bail, the Investigating Officer had laid the charge-sheet would itself show that custodial interrogation of the present petitioner was not felt necessary for completion of the investigation of Hailakandi Police Station Case No. 05/2023.

16. This Court is of considered opinion that though mere grant of interim anticipatory bail would not automatically mean that the said interim anticipatory bail shall have to be made absolute. Same would be dependent on the facts and circumstances of the case. In the instant case, as nothing has been reported regarding any misuse of liberty by the present petitioner during continuance of interim anticipatory bail, rather learned counsel for the petitioner has submitted that the petitioner has cooperated with the Investigating Officer.

17. In view of above, the interim anticipatory bail granted to the present petitioner by order dated 31.03.2023 is hereby made absolute with condition No. 2 and 3 attached to the said interim order remaining intact.

18. With the above observation, the instant anticipatory bail application is hereby disposed of.

JUDGE

Comparing Assistant