

GAHC010076762023



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

Case No. : AB/1318/2023

PATRIOT BRAHMA
S/O MAHENDRA BRAHMA
VILL- BAREGAON
P.S. TAMULPUR
DIST. BAKSA, BTAD,

VERSUS

STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S R RABHA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

11.04.2023

Heard Mr. S.R. Rabha, learned counsel for the petitioner and Mr. B.B Gogoi, learned Addl. Public Prosecutor, Assam for the State.

2. This anticipatory bail application has been filed by the petitioner namely,

Patriot Brahma, apprehending arrest in connection with the Barama P.S. Case No. 34/2022 (PRC Case No. 1106/2022) under Section 306 of the IPC.

3. An FIR dated 10.06.2022 was lodged before the Barama Police Station by the informant alleging that the petitioner had romantic relationship with his late daughter and they were frequently engaged in conversation over mobile phone and messages etc. The informant suspects that the accused must have heard his late daughter in some manner, thereby forcing her to take the extreme step of committing suicide. Accordingly, investigation in this matter was prayed for. The said FIR was accepted and registered as Barama P.S. Case No. 34/2022 under Section 306 of the IPC and police proceeded with the investigation.

4. It is submitted by the learned counsel for the petitioner that charge-sheet has already been filed before the Competent Court and the petitioner has been directed to appear before the Competent Court on 29.03.2023. It is submitted that the petitioner has co-operated with the investigation and has appeared before the I.O. as and when required. However, he is now on the apprehension that in view of the summons being issued if he appears before the Court, he will be arrested. Therefore, he seeks a bail from this Court.

5. In ***Siddharth Vs. State of Uttar Pradesh and Anr***, reported in **(2022) 1 SCC 676**, the Apex Court has held as under:

9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the

charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet.

10. *We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it [Joginder Kumar v. State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] . If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.*

6. In view of the clear law laid down by the Apex Court, this Court is of the opinion that at this stage, the anticipatory bail petition can be closed relegating the petitioner to appear before the Competent Court and file any appropriate application if so required. Upon appearance of the petitioner in response to the summons issued the Competent Court will pass appropriate orders taking into

account the merit of the case as well as by the law laid down by the Apex Court rendered in *Siddharth (Supra)* and pass appropriate orders.

7. The anticipatory bail petition is accordingly disposed of in terms of the above.

JUDGE

Comparing Assistant