

GAHC010078122023



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

Case No. : AB/1321/2023

AMINUL HAQUE
S/O AZAD ALI
R/O VILL- DUMUNICHOWKI
P.S. SIPAJHAR
DIST. DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M HAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 15.05.2023.

Heard Mr. A. Hawari, learned counsel for the petitioner and also heard Mr. P.S. Lahkar, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

2. Apprehending arrest in connection with the BI[EO] P.S. Case No. 28/2022, under Sections 120[B]/379/411/285 of the IPC read with section 23 of the Petroleum Act and read with section 7 of the EC Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant, namely, Aminul Haque, for grant of pre-arrest bail.

3. The said case has been registered on the basis of an FIR lodged by one Dilip Kumar Deka, on 21.10.2022, to the effect that acting on tip off he has conducted an enquiry at Dumunichowki, Darrang, Mangaldoi and visited the resident/godown of Aminul Haque and found one Tank Truck Lorry loaded with MS & HSD, bearing registration No. AS-01-MC-8851 and also found decanting/cutting of HSD/MS from the said Tank Truck to plastic jerricans/barrels for selling in open market illegally by the driver of the said Tank Truck, namely, Sri Bhuban Chetry with the help of the present accused, Aminul Haque.

4. Mr. Hawari, learned counsel for the applicant submits that this is the third anticipatory bail application preferred by the applicant and the first application was dismissed by this Court vide order dated 24.11.2022, in AB No.3329/2022, after perusing the case diary and the second anticipatory bail application, being AB No.3832/2022, dated 02.02.2023 was dismissed by this Court and this third application is preferred on the ground that the punishment prescribed for the offences, under which the case has been registered, are below seven years and as such, before causing arrest of the applicant in this case, Section 41(A) notice is required to be served and the same has not yet been served and therefore, it is contended to allow this petition on this ground.

5. On the other hand, Mr. P.S. Lahkar, learned Addl. Public Prosecutor, Assam submits that pursuant to the order of this Court, dated 10.05.2023, he has obtained verbal instruction from the concerned Police Station and submits that notice under Section 41 of the Cr.P.C. has not yet been served upon the applicant. However, Mr. Lahkar has vehemently opposed the petition on the ground that having found sufficient materials in the case diary against the applicant, the earlier two anticipatory bail applications were dismissed and no fresh ground is assigned in the present bail petition and therefore, Mr. Lahkar contended to allow the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and also the documents placed on record and also perused the order dated 24.11.2022, passed in AB No.3329/2022 and the order dated 02.02.2023, passed in AB No.3832/2022 and it appears that the aforesaid two anticipatory bail applications were dismissed after perusing the case diary and having found sufficient materials against the applicant.

7. The ground so assigned in filing this third anticipatory bail application left this Court unimpressed. In view of the materials available in the case diary, the requirement of his custodial interrogation cannot be ignored. Having regards to above and also having regard to the nature and gravity of the offence as well as the submissions of learned Advocates of both sides, the petition stands dismissed.

8. However, it is provided that if arrest of the applicant is required for the purpose of investigation, the investigating agency shall follow the directions given by the Hon'ble Supreme Court in the case of:- (i) **Arnesh Kumar vs. State of Bihar and another**, reported in **(2014) 8 SCC 273** and (ii) **Satender Kumar Antil vs. CBI and another**, reported in **2023 LiveLaw (SC) 233** and comply with the provision of Section 41(A) of the Cr.P.C.

9. In terms of above, this anticipatory bail application stands disposed of.

10. A copy of this order be furnished to the learned Addl. P.P., Assam for necessary communication.

JUDGE

Comparing Assistant