

GAHC010090032023



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

Case No. : Bail Appln./1524/2023

BODRUL HOQUE
S/O LATE YAFUS ALI
R/O VIL- DALGRAM (NAYAGRAM)
P.S. NILAMBAZAR
DIST. KARIMGANJ, ASSAM

VERSUS

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

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 17.05.2023

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, the learned Addl. P.P. for the State.

2. The petitioner, namely, Bodrul Hoque, who was arrested on

23.06.2022, in connection with Nilambazar PS case no. 327/2020, under sections 120B/364A IPC, corresponding to GR case no. 3371/2020, has filed this second application for regular bail under section 439 Cr.P.C. The first application was rejected by order dated 29.09.2022, passed in BA 2287/2022 and it is submitted that the other co-accused have been granted bail by order dated 11.04.2023, passed in B.A. 1298/2023.

3. As per copy of order dated 13.03.2023, passed by the learned Chief Judicial Magistrate, Karimganj in the proceeding of GR case no. 3371/2020, the case is still pending at the appearance stage.

4. The scanned copy of the case records was called for in connection with B.A. 2287/2022. The said case record has been called for and tagged with the present case. The learned Addl. P.P. has perused the case record and the order-sheet and has opposed the prayer for bail on the ground that the petitioner had kidnapped the son of the informant and took him to Bangladesh and therefore, if bail is granted to the petitioner, he would conceal himself to avoid trial. It is submitted that on the said ground the previous bail application was rejected and in this application, no new circumstances has been made out.

5. On a perusal of the case record, it appears that the learned APP is correct in making a statement that petitioner had kidnapped the son of the informant and he was taken and confined in Bangladesh. Therefore, there is a possibility that the petitioner is a flight risk. This was precisely the ground for rejection of the previous bail application.

6. However, the petitioner has now projected that subsequent to the rejection of bail application in respect of the petitioner by order dated 29.09.2022 in BA 2287/2022, two co-accused persons have been enlarged on

bail. One After Uddin was granted pre-arrest bail by order dated 19.12.2022, passed by the learned Sessions Judge, Karimganj in Misc. B.A. No. 381/2022. One Ainul Haque, was granted pre-arrest bail by order dated 08.02.2023, passed by the learned Sessions Judge, Karimganj in Misc. B.A. No. 18/2023. Moreover, as per order dated 13.03.2023, one Alim Uddin, another co-accused was allowed to remain on previous bail. It is also seen that the petitioner is in custody for last 328 days. Moreover, the trial appears to be still at a committal stage.

7. Although there are sufficient materials in the case record to implicate the petitioner of participating in the offence. However, considering the fact that five co-accused have been enlarged on bail, long custodial detention of 328 days would entitle the petitioner of being released on bail.

8. Therefore, the Court is inclined to release the petitioner on bail on his furnishing a bail bond for a sum of Rs.1,50,000/- (Rupees one lakh fifty only), with 2 (two) solvent surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Karimganj. Out of the two sureties, one surety should offer his/her immovable property having sufficient value to cover the bail amount as security for grant of bail.

9. Bail is granted on the following conditions:-

I. The petitioner shall make himself available to the police or any other investigating agency or Court in the present case as and when required.

II. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to Court or

to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.

III. The petitioner shall not obstruct the smooth progress of the investigation/trial.

IV. The petitioner shall not misuse his liberty in any manner.

V. The petitioner shall appear before the I/O within 15 (fifteen) days from the date of his release.

VI. The petitioner shall not leave the jurisdiction of Karimganj District without prior permission from the learned Chief Judicial Magistrate, Karimganj, while the case is in committal stage and thereafter from the learned Trial Court after case is committed for trial.

VII. Along with the bail bond, the petitioner shall have to submit an undertaking in form of an affidavit that he shall not make any attempt to meet and/or threaten the informant or any other member of informant's family or the victim, or to dissuade them from giving evidence in Court. If such an attempt is brought to the notice of the learned Committal/Trial Court, it would be open to the said learned Court to order cancellation of this bail and to cause arrest of the petitioner as a measure to ensure safety of the informant and witnesses.

VIII. In the undertaking in form of an affidavit to be submitted, the petitioner shall also undertake to physically appear before the learned committal/trial Court on all dates fixed. The petitioner would also undertake that if he cannot appear for compelling reasons, he

would ensure that he is duly represented by his learned Advocate, duly instructed to appear and cross-examine and/or examine any witness who is examined during his absence and in such an event, he would not dispute his identity or the identity of the witnesses.

IX. If any of the condition for grant of bail is not complied with, it would be open to the learned Trial Court to order cancellation of bail and/or for issuing fresh NBWA against the petitioner to secure his presence in trial.

10. Let the records of BA 2287/2022 be returned.
11. Application is disposed of.

JUDGE

Comparing Assistant