

GAHC010094182023



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

Case No. : Bail Appln./1568/2023

AJIJUL HOQUE
S/O MAJID ALI R/O VIL. AND P.O. SANTIPUKHURI PIN 784144 P.S. SIPAJHAR
DIST. DARRANG ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. P DEKA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

25.05.2023

Heard Mr. P. Deka, learned counsel for the petitioner and Mr. B.B. Gogoi, learned Addl. PP for the State.

2. This bail application has been filed by the petitioner, namely, Ajijul Hoque, seeking bail in connection with G.R. Case No. 44/2018 under Sections 279/304(A) of the IPC.

3. The petitioner before this Court is a resident of Village: Santipukhuri, P.S: Sipajhar in the district of Darrang (Assam). The petitioner claims to be a Driver by profession.

4. By an FIR dated 20.01.2018 lodged by the informant one Biraj Das, it was alleged that on 17.01.2018 at around 8.30 AM a vehicle bearing registration No. AS-25-CC-3307 which was being driven in a rash and negligent manner, had knocked down the uncle of the informant one Shri Basab Das, near Ganesh Mandir, Agiyathuri while he was returning from work. The injured person was admitted to hospital and later referred to GMCH for better treatment. However, during his treatment in GMCH, the injured person expired. The said FIR was registered as Hajo P.S. Case No. 40/2018 under Sections 279/304(A) IPC. After completion of the investigation, the charge-sheet being Charge-Sheet No. 16/2018 dated 31.01.2018 was submitted before the Court of JMFC, Kamrup at Hajo. The Court of JMFC, Kamrup at Hajo took cognizance of the offence against the petitioner under Sections 279/304(A) of the IPC and summons were issued to the petitioner. The petitioner upon receipt of the summons issued by the JMFC, Kamrup at Hajo appeared before the Court and an advocate was engaged to represent him before the Court by executing proper Vakalatnama. A bail petition was filed before the Court of JMFC, Kamrup at Hajo and upon orders of the said Court, he was allowed to go on bail. The Trial proceeded in the matter and the petitioner was summoned to appear before the Court for evidence and the matter was fixed on 29.04.2020. However, because of the COVID-19 Pandemic situation prevalent at the relevant point in time as well as the nationwide lockdown which was imposed, the petitioner took necessary steps in the matter through his engaged Counsel. From time to time, the counsel engaged by the petitioner used to inform him about the development of

the case.

5. It is submitted that, after 11.10.2021, the engaged counsel did not contact him and the petitioner was on the bonafide belief that he is looking after the case entrusted by the petitioner. On 24.04.2023, while he was at his home, the police came with a Non-bailable Warrant of Arrest issued against him and on the strength of the NBWA issued by the Court of JMFC, Kamrup at Hajo, he was arrested and produced before the learned Addl. Chief Judicial Magistrate, Kamrup at Hajo on 25.04.2023. Upon appearance before the Court, the petitioner came to be aware that there was no representation on his behalf for the past about one year and as a consequence thereof the Court had issued the NBWA. On 25.04.2023 when the petitioner appeared before the Court of Addl. CJM, Kamrup at Hajo, he was remanded to judicial custody on the ground that the petitioner was absent without any steps for about one year. The petitioner, thereafter, preferred a bail petition before the Court of JMFC, Kamrup at Hajo and the same was rejected vide order dated 26.04.2022 on the ground that if the petitioner is released on bail there are chances that the petitioner will abscond and which will prolong the trial of the case. The bail petition was accordingly rejected.

6. The learned counsel for the petitioner submits that the petitioner cannot be considered to be an absconder. He had appeared earlier before the competent Court and thereafter, he had engaged his counsel who had taken steps in the past. However, because of the COVID-19 pandemic situation, his counsel perhaps failed to take appropriate steps. Such default on the part of the counsel cannot be attributed to the petitioner and therefore the petitioner cannot be treated to be an absconder. The learned counsel for the petitioner submits that the order directing the petitioner to be taken into custody was not

passed on the merits of the case but only on the ground that the petitioner may abscond. It is, therefore, submitted that the prayer for bail be granted and the petitioner be directed to be enlarged on bail.

7. This Court vide earlier order dated 04.05.2023 called for the scanned copies of the case records from the competent Court i.e., Court of Judicial Magistrate, 1st Class, Kamrup, Hajo.

8. The materials available before this Court have been carefully perused. Perusal of the orders which are enclosed to the bail application as well as the scanned copies of the case records which are available reveal that the petitioner on earlier dates had appeared before the competent Court, however, on some dates and more particularly during the COVID-19 Pandemic situation he had failed to appear before the competent Court and his counsel also did not take any steps. As such the NBWA was issued by the Court and on a subsequent date when he appeared, he was taken into judicial custody.

9. Having heard the learned counsels for the parties and upon perusal of the materials available on record including the scanned copies of the LCR, this Court is of the view that the petitioner can be enlarged on bail.

10. Therefore, the accused-petitioner, named above, shall be released on bail in connection with the aforementioned case, on furnishing a bail bond of Rs. **15,000/-** (Rupees Fifteen Thousand) with one local surety of like amount to the satisfaction of the Court of JMFC, Kamrup, Hajo, subject, of course, to the following conditions:

(i) That the accused-petitioner shall appear before the competent Court on each and every date unless specific orders are passed by the Competent Court

giving him liberty from appearing on such dates;

(ii) That the accused-petitioner shall not hamper or tamper with the investigation in any manner;

(iii) That the accused-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 the Court or to any police officer; and

(iv) That the accused-petitioner shall not move out the jurisdiction of the Competent Court without permission.

11. If any of the conditions are violated, the competent Court will be at liberty to cancel the bail by this Court.

12. Accordingly, the bail application stands disposed of.

JUDGE

Comparing Assistant