

GAHC010113402023



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

Case No. : Bail Appln./1900/2023

RAFIK KHAN
S/O- REFET ALI KHAN, R/O- NEW GHAT, DHUBRI TOWN, P.S. AND DIST.-
DHUBRI, ASSAM, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR. A RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 03.08.2023

Heard Mr. A. Rahman, learned counsel for the accused/petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor for the State.

2. This is an application made under **Section 439 Cr.P.C.**, seeking bail by

the accused-petitioner, namely, **Rafik Khan** in connection with **Special Case No. 266/2022(arising out of Dhubri P.S. Case No. 1997/2021)** pending in the court of learned Special Judge, Dhubri.

3. It is submitted by the learned counsel for the petitioner that the police has recovered some contraband articles from the possession of two FIR named accused persons in connection with Dhubri P.S. Case No. 1997/2021. But after completion of investigation, charge-sheet was submitted against the FIR named accused persons along with the present petitioner who was shown as absconder in the charge-sheet. Learned counsel for the petitioner has also pointed out that no any narcotic drugs was recovered from the possession of the present petitioner and only on the basis of the statement of the co-accused persons that the petitioner was also involved in the instant case, charge-sheet was submitted against him without showing any such ground.

4. It is further submitted that as per direction of this Court, the petitioner had surrendered before the Special Judge, Dhubri on 12.12.2022. Since then he has been detained in custody. Considering the period of detention, petitioner may be enlarged on bail.

5. On the other hand, Mr. R.J. Baruah, learned Addl.P.P. has vehemently opposed in granting bail to the petitioner by stating that as the petitioner was shown as absconder in the charge-sheet for which warrant of arrest was issued against him by the learned trial court. The learned Addl.P.P. has also submitted that during the pendency of the trial, eight witnesses were examined and some other witnesses are yet to be examined. Hence, at this stage, it cannot be said that there is no allegation against the petitioner to be involved in the case.

6. I have considered the submissions made by the learned counsel for the parties.

7. It appears from the record that 7400 of pyeevon spas plus capsules and nitrosum tablets were recovered from the possession of one Mahmudul Hassam Khan and Mojid Hussain. There is no reflection in the FIR regarding involvement of the present petitioner. From the FIR, it reveals that the petitioner was not present at the time of search, seizure and recovery. Eight witnesses were examined in the case but none of the witnesses have stated before the court that they have seen the present petitioner on the spot. The allegation against the accused/petitioner is that during investigation, the arrested accused persons disclosed before the investigating officer that another accused i.e. the present petitioner is also involved in the present case. It also appears from the record that the accused/petitioner was arrested on 12.12.2022 and since then, he has been detained in custody. Considering the materials available in the record as well as the length of detention of the accused-petitioner, prayer for bail is allowed.

8. Accordingly, the accused-petitioner, named above, shall be released on bail in connection with **Special Case No. 266/2022(arising out of Dhubri P.S. Case No. 1997/2021)** pending in the court of learned Special Judge, Dhubri, on furnishing bail bond of **Rs.50,000/-** with **two suitable sureties** of the like amount out of which one of the sureties should be a Government employee to the satisfaction of learned Special Judge, Dhubri, Assam.

9. The direction for bail is further subject to the conditions that the accused-petitioners:

(a) shall not leave the territorial jurisdiction of learned Special Judge Dhubri, Assam, without prior written permission from him;

(b) 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.

10. The learned jurisdictional Special Judge, will be at liberty to put any other condition considered appropriate, in addition to the conditions imposed, to ensure regular appearance of the accused-petitioner before the Court during trial.

11. In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant