

GAHC010120752023



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

Case No. : Bail Appln./1937/2023

ABU SUFIAN AHMED
S/O- ABDUL BASIR AHMED, R/O- VILL- DURGAMARI, PART-II, P.S. @ DIST.-
BONGAIGAON, ASSAM- 783372

VERSUS

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

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 26.07.2023

Heard Mr. S.C Biswas, learned counsel for the petitioner. Also heard Ms. S.H. Borah, learned Addl. Public Prosecutor for the State.

2. This bail application under Section 439 Cr.P.C., 1973 has been preferred by petitioner, namely, Abu Sufian Ahmed, who has been arrested on 03.02.2023 in connection with Bongaigaon PS Case No. 51/2023 under Sections 302/201/34 of

the IPC (Corresponding to G.R. Case No. 34/2023).

3. The accusation in this case is that on 02.02.2023, one Abdul Basir Ahmed lodged an FIR before the Incharge of Bongaigaon Police Station, *inter alia*, alleging that on the night of 02.02.2023 at about 01.00 AM some unknown miscreants came to the house of the nephew of the first informant and took out the nephew and niece of the first informant and killed them by cutting their neck. On receipt of the said FIR, Bongaigaon P.S. Case No. 51/2023 was registered and investigation was initiated. Ultimately, on completion of the investigation, charge-sheet was laid vide charge-sheet No. 111/2023 dated 29.04.2023 against three accused persons including the present petitioner.

4. The learned counsel for the petitioner has submitted that the petitioner was arrested on 03.02.2023 and he has been detained behind the bar for last 173 days and in this case charge-sheet was laid against the present petitioner on 29.04.2023 i.e. only on 85th day of the date of arrest of the present petitioner. The learned counsel for the petitioner has submitted that bare perusal of the charge-sheet would show that the charge-sheet in case has been submitted without collecting forensic examination report and it is categorically stated in the charge-sheet itself that as mandatory period of investigation is almost complete, hence, a part charge-sheet has been submitted in the instant case. The learned counsel for the petitioner submits that as per recent Judgment of Hon'ble Supreme Court of India in ***Ritu Chabaria Vs. Union of India and Ors***, reported in ***(2023) SCC Online SC 502***, wherein Hon'ble Supreme Court have observed that without completing the investigation of a case, charge-sheet or a prosecution complaint cannot be filed by an investigating agency only to deprive and arrested accused persons of his right to default bail under Section 167 (2) of the Cr.P.C. The learned counsel for the petitioner submits that after the filing

of the part charge-sheet, no final charge-sheet has yet been filed and hence on that ground only learned counsel for the petitioner prays for default bail of the present petitioner.

5. On the other hand, the learned Addl. Public Prosecutor placed the scanned copy of the case record which was called for in connection with this case before this Court and submits that the charge-sheet has been filed after almost completion of the investigation and only forensic report was not collected. She opposes the grant of bail of the present petitioner only on the ground that there are serious incriminating materials against the present petitioner in the charge-sheet and the trial is pending at the initial stage only.

6. I have considered the submissions made by learned counsel for both sides and perused the materials on record including the scanned copy of the case record of Bongaigaon P.S. Case No. 51/2023.

7. On perusal of the case record, more particularly, the charge-sheet which has been laid in this case, it appears that it is clearly mentioned in the charge-sheet that the said charge-sheet is a part charge-sheet as forensic laboratory report could not be collected. In Ritu Chabaria (Supra), Hon'ble Supreme Court of India has observed that without completing the investigation of a case, a charge-sheet or prosecution complain cannot be filed by the investigating agency only to deprive and arrested accused of his right to default bail under Section 167(2) of Cr.P.C. It further observed that such a charge-sheet, if filed by any investigating authority without first completing the investigation would not extinguish the right to default bail under Section 172(2) Cr.P.C.

8. In the instant case, the present petitioner was arrested on 03.02.2023, hence and the charge-sheet ought to have been filed on or before 04.05.2023 i.e. on completion of the 90th day of arrest of the present petitioner. However,

instead of the final charge-sheet, a part charge-sheet was filed on 29.04.2023 and in view of the Judgment of Hon'ble Supreme Court of India in Ritu Chabaria Vs. Union of India (Supra), the present petitioner is entitled to get default bail under Section 167(2) of the Cr.P.C.

9. Hence the present petitioner namely, Abu Sufian Ahmed is allowed to go on bail of Rs.50,000/- (Rupees Fifty thousand) only with one surety of like amount to the satisfaction of learned Chief Judicial Magistrate, Bongaigaon subject to the following conditions :-

(1) The petitioner shall co-operate in his trial and shall appear before the learned trial Court as and when so required, for the purpose of the trial by the learned Trial Court.

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

10. With the above observation, the instant bail application stands disposed of.

JUDGE

Comparing Assistant