

GAHC010120862023



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

Case No. : AB/1973/2023

NASIR UDDIN @ NASIR UDDIN CHOUDHURY
S/O- LATE ABDUL NOOR CHOUDHURY,
VILLAGE- DHOLIDOHAR GRANT,
P.O. AND P.S.- PANCHGRAM,
DISTRICT- HAILAKANDI, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

07.08.2023

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner. Also heard Mr. R.J. Barua, learned Additional Public Prosecutor for the State.

This is an application filed under **Section 438 Cr.P.C.**, praying for pre-arrest bail by the petitioner, namely, **Nasir Uddin @ Nasir Uddin Choudhury** in connection with **Panchgram P.S. Case No.52/2022**, registered under Sections 147/148/149/302/325/384/447 IPC.

It is submitted by the learned counsel for the petitioner that though the name of the petitioner is reflected in the FIR but none of the witnesses stated anything before the Investigating Officer or the Magistrate recorded under Section 164 Cr.P.C that he was involved in committing the murder of the deceased. The police never visited his house in search of him during investigation. As his name mentioned in the FIR, charge-sheet has been submitted against the petitioner showing him as an absconder.

By referring the judgment of ***Ravendra Saxena vs. State of Rajasthan***, reported in **(2010) 1 SCC 684**, the learned counsel for the petitioner has submitted that the anticipatory bail can be granted at any time so long as the applicant has not been arrested. When the application is made to the High Court or the Court of Sessions, it must apply it's own mind on the question and decide when the case is made out for granting such relief. Under such backdrop, the learned counsel for the petitioner submits that the benefit of pre-arrest bail can be extended to the petitioner.

On the other hand, Mr. R.J. Barua, learned Addl.P.P has opposed in granting pre-arrest bail to the petitioner by stating that the petitioner was not available during investigation and as such he was shown as absconder in the charge-sheet. It is also submitted that there is sufficient incriminatory materials against the petitioner. If bail is granted to the petitioner, there is every chance of his further absconding during trial also. The learned Addl.P.P submits that bail may not be granted to the petitioner.

I have considered the submissions made by the learned counsel for the parties. I have also perused the scanned copy of the LCR.

Admittedly, though the name of the petitioner is reflected in the FIR but subsequently, he was not available during investigation. As per the statement of the witnesses recorded under Section 164 Cr.P.C, due to the assault caused by one Jakir Hussain Choudhury, one person died. The merits of the case shall have to be assessed at the time of the trial on recording the evidence of the witnesses. At this stage, as it appears that there is omnibus allegation against the petitioner along with other accused persons, the prayer of the petitioner is allowed.

The petitioner is directed to appear before the learned CJM, Hailakandi within 15 (fifteen) days from today and on filing of appropriate petition, the learned CJM, Hailakandi shall enlarge the petitioner on bail on furnishing a bail bond of Rs.50,000/- with one surety of like amount to his satisfaction. The learned CJM, Hailakandi may impose any conditions at the time of releasing the petitioner on bail to procure his attendance during trial.

The bail application stands disposed of.

JUDGE

Comparing Assistant