

GAHC010128632023



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

Case No. : AB/2191/2023

MIRAN ALI
S/O LATE MAKIBAR RAHMAN
R/O VILL- KUMARPATA
P.S. RANGIA
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : F ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 05-08-2023

Heard Mr. F. Islam, learned counsel for the petitioner and Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Miran Ali has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Changsari Police Station Case no. 210/2022 [corresponding to G.R. Case no. 1172[K]/2022] registered under Sections 419/395, Indian Penal Code [IPC] for the second occasion after rejection of his earlier pre-arrest bail

application, A.B. no. 3263/2022 by an order dated 25.11.2022 after perusal of the materials available in the case diary, produced on that date by the learned Additional Public Prosecutor.

3. As per the First Information Report [FIR], lodged on 11.08.2022 by the Manager, M/s Mayur Roller Flour Mills, when two employees of the said company were carrying cash in a vehicle bearing registration no. AS-01/DP-6808 [TATA Tiago], the said vehicle was waylaid at around 8-25 a.m. on 11.08.2022 at a place between the factory gate of M/s Mayur Roller Flour Mills and M/s Chitra Coal Storage by five unknown miscreants. Out of the five persons, four persons were wearing police uniforms and one of them had brandished him a pistol. After intercepting the vehicle at gun point, the persons snatched away a cash amount of Rs. 12,50,000/- which were carried by the two employees of the company in the vehicle. The miscreants also snatched away the keys of the vehicle and thereafter, fled away from the place in a Wagon R vehicle [silver colour].

4. When the previous pre-arrest bail application was moved, the case diary of Changsari Police Station Case no. 310/2022 was called for. When the case diary was produced by the learned Additional Public Prosecutor, the materials in the case diary, collected during the course of investigation carried out till that date, were perused on 25.11.2022. Upon perusal of the materials in the case diary, it was found that the petitioner was one of the four persons who wore police uniforms at the time of committing the dacoity on 11.08.2022. The petitioner was found involved in snatching away the amount from the two employees of M/s Mayur Roller Flour Mills. The materials further indicated that the petitioner left the place of occurrence after committing the dacoity in a Wagon R vehicle, mentioned in the FIR.

5. It was in view of availability of such incriminating materials in the case diary indicating direct involvement of the petitioner in the act of dacoity committed on 11.08.2022, the Court declined to extend the benefit of pre-arrest bail to the petitioner in the previous pre-arrest bail application, A.B. no. 3263/2022, preferred by the petitioner, was rejected.

6. In the instant application, the petitioner has averred that the petitioner's mother is suffering from various diseases like COPD and type 2 diabetes mellitus and needs treatment

of a doctor in a regular manner. It is further averred that the alleged snatched money has already been recovered from the other co-accused persons and as such, the case of the petitioner may be considered for extending the benefit of pre-arrest bail.

7. It is settled that after rejection of application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete.

8. Having regard to the grounds urged in this pre-arrest bail application, preferred for the second time, this Court is of the considered view that the same are not good grounds which deserve re-consideration of the earlier order dated 25.11.2022 passed in A.B. no. 3263/2022. Accordingly, the prayer for pre-arrest bail made by the petitioner is declined.

JUDGE

Comparing Assistant