

GAHC010145782023



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

Case No. : AB/2327/2023

MD. AINUDDIN ALI
S/O- MD. OMAR ALI, R/O- NO.2, KACHUTOLI PATHER, P.S. SONAPUR, DIST.-
KAMRUP (M), ASSAM

VERSUS

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

Advocate for the Petitioner : MR. A M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

10.08.2023

Heard Ms. M. Das, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam.

This application under section 438 of the Code of Criminal Procedure, 1973 has been preferred by the petitioner, namely, Md. Ainuddin Ali, who is

apprehending his arrest in connection with Sessions P.S. Case No. 142(K)/2015 which is pending before the Court of learned Additional District & Sessions Judge No. 1, Kamrup(M), Guwahati.

The case of the petitioner is that on the basis of an FIR lodged by one Mr. Motleb Ali, on 25.01.2014, before the In-Charge of Sonapur Police Station, Sonapur P.S. Case No. 23/2014 was registered and ultimately on completion of the investigation charge-sheet was laid against the present petitioner under section 366A of the Indian Penal Code and in connection with the said charge-sheet the trial was initiated which is pending before the Court of learned Additional District & Sessions Judge No. 1, Kamrup(M), Guwahati.

It is submitted by the learned counsel for the petitioner that the petitioner appeared before the Court of learned Additional Sessions Judge No. 1, Kamrup(M), Guwahati to face the trial.

Though the petitioner had appeared earlier in the said trial, however, he defaulted in his appearance and on 14.08.2017, the learned Trial Court declared him as an absconder him and issued proclamation and attachment warrant against the present petitioner and also issued non-bailable warrant of arrest against the present petitioner.

Learned counsel for the petitioner has submitted that the present petitioner defaulted in appearance as he went to Bangalore and thereafter, in the year 2022 due to Covid-19, he was unable to appear before the Court. Hence, it is prayed that he may be given anticipatory bail in the instant case as he is apprehending arrest.

Mr. B. Sarma, learned Additional Public Prosecutor, Assam submits that the

instant anticipatory bail filed by the present petitioner is not maintainable in view of the ruling of Hon'ble Supreme Court of India in *State of M.P. Vs. Pradeep Sharma*, reported in (2014) 2 SCC 171, wherein Hon'ble Supreme Court of India had observed that no application for anticipatory bail is maintainable when the petitioner has been proclaimed as an absconder under section 82 of the Code of Criminal Procedure by the Court of law.

In view of the submissions made by learned counsel for the parties as well as in view of the facts and circumstances of the case which shows that the present petitioner was declared as an absconder under section 82 of the Code of Criminal Procedure by the learned Trial Court, this Court is of considered opinion that instant anticipatory bail application filed by the present petitioner is not maintainable and accordingly, the same is dismissed.

JUDGE

Comparing Assistant