

GAHC010156032023



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

Case No. : AB/2596/2023

HAFIZUR RAHMAN
S/O AZIYAL HOQUE @ AZIAL
R/O VILL- CHAR KHALISHAMARI
P.O. AND P.S. SUKCHAR,
DIST. SOUTH SALMARA MANKACHAR, A SSAM, PIN-783135

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

11.09.2023.

Heard Mr. M. Islam, learned counsel for the applicant and also heard Mr. P. Borthakur, learned Addl. Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with **Sukchar P.S. Case No.84/2023**, under section **120(B)/406/379 IPC**, this application, under Section 438 of Cr.P.C., is preferred by applicant **Hafizur Rahman** for grant of pre-arrest bail.

3. It is to be noted here that the above noted case has been registered on the basis of one FIR lodged by one Prasad Ch. Ray, S.I. of Police, Sukchar Police Station 04.03.2023.

4. The essence of allegation made in the said FIR is that pursuant to an order of Chief Judicial Magistrate, South Salmora, Mankachar, he had conducted an audit/enquiry in various Go-Sala and Pound in the district and found many cattle missing from the Go-Sala and Pounds, and thereafter, he had submitted one report to the Chief Judicial Magistrate.

5. Mr. Islam, learned counsel for the applicant submits that the applicant is innocent and no way involved with the offence alleged in the FIR. Mr. Islam further submits that the applicant was granted the privilege of interim pre-arrest bail by this court vide order dated 31.07.2023 and pursuant to the said order, the applicant had appeared before the I.O. and his statement is recorded and he has been extending co-operation with the investigating agency and his custodial interrogation is not required in the interest of investigation. Mr. Islam further submits that the applicant has been running a Goshala, having been permitted by the District Magistrate, South Salmara to preserve cattle and buffaloes vide order dated 22.02.2023, and that he was allowed to maintain 195 numbers of cattle and out of the same 170 cattle suffered demise on account of different disease suffered by them and rest are alive and he had submitted P.M. Report of all the dead cattle. Mr. Islam further submits that the allegations leveled in the FIR against the applicant are false and that he is ready to co-operate with the investigating agency the therefore, Mr. Islam contended to

make the interim order dated 31.07.2023, absolute in the same terms and condition.

6. Per contra, Mr. P. Borthakur, learned Addl. P.P. has vehemently opposed the petition. Producing the Case Diary before this court Mr. Borthakur submits that the I.O. has collected sufficient incriminating materials to show complicity of the applicant with the offences alleged in the FIR and that custodial interrogation of the applicant is very much necessary in the interest of investigation and therefore, it is contended to dismiss this petition. However, Mr. Borthakur submits that the applicant has been co-operating with the investigating agency and he appeared before the I.O. and his statement is also recorded.

7. Having heard the submission of learned Advocates for both the sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Borthakur, learned Addl. PP.

8. It appears from the case diary that the I/O has collected sufficient incriminating materials in support of the allegation made in the FIR. But, it appears that the applicant has been co-operating with the investigating agency. He had appeared before the I.O. and his statement is also recorded. Further, **Annexure-4 series**, the Post Mortem Reports of 170 cattle, reveals that out of 195 cattle, 170 cattle suffered demise on account of different diseases and 26 cattle are still alive.

9. Having considered aforementioned facts and circumstances, and also having considered the nature and gravity of the offence, and the punishment prescribed for the same, as well as the submission of learned Advocates for both the sides, this Court is left unimpressed by the submission of Mr. Borthakur,

learned Addl. P.P. that custodial detention of the applicant is warranted in this case. His custodial interrogation seems to be unwarranted in the interest of investigation. Accordingly, striking a balance between the individual right of the applicant and that of the societal interest, this Court is of the view that this is a fit case where the privilege of pre arrest bail can be extended to the applicant. Accordingly, the interim order dated 31.07.2023 is hereby made absolute in the same terms and condition

10. In terms of above this anticipatory bail application stands disposed of. The case diary be returned.

JUDGE

Comparing Assistant