

GAHC010160912023



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

Case No. : AB/2545/2023

DILDAR HUSSAIN
S/O IBRAHIM ALI
R/O SHILLONGONI, NAGAON
P.S. NAGAON SADAR,
PIN-782002,
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H K BARUAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 23.08.2023

Heard Mr. H.K.Baruah, learned counsel for the petitioner. Also heard Mr. M.P.Goswami, learned Addl. Public Prosecutor for the State/respondent.

By this petition filed under Section 438 Cr.P.C., the petitioner, namely, **Dildar Hussain**, has prayed for granting pre-arrest bail, apprehending arrest in connection with

Nagaon P.S. Case No. 542/2023 registered u/s 304/379/34 of the IPC r/w Section 138 of the Assam Electricity Act.

The case diary, as called for, is placed before this Court.

Mr. H. K. Baruah, learned counsel for the petitioner, submits that the petitioner has been attempted to be roped into a false case as no electrocution around the poultry farm was done, but a legally permissible connection is there as a consumer of electricity. Mr. Baruah further submits that the petitioner was not at the poultry farm when the alleged incident of electrocution of the deceased had taken place.

Opposing the pre-arrest bail application, Mr. M.P. Goswami, learned Additional Public Prosecutor, submits that there is abundance of *prima facie* incriminating evidence against the petitioner. Mr. Goswami submits that as per post-mortem report, the deceased sustained a number of injuries and noted that the wound sustained by him was most likely to be burn injury due to electric shock and the cause of death was most likely Asphyxia. Therefore, Mr. Goswami submits that the pre-arrest bail application of the petitioner, who is the prime accused, may be rejected.

The F.I.R. reveals the allegation that on 08.06.2023, the younger brother of the informant died due to electrocution when he was playing near fencing of the poultry farm of the present petitioner.

A perusal of the case diary undoubtedly reveals abundance of evidence of rash or negligent act of the petitioner. However, it may be noted that Section 304 A of the IPC carves out cases where death is caused by doing a rash or negligent act, which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300 of the IPC. In other words, the Section has application to a case where there is neither intention to cause death nor knowledge that the act in all probability will cause death. On the other hand, Section 138 of the Electricity Act states as follows:

“ 138. *Interference with meters or works of licensee-* (1) , -(1) *Whoever,-*

(a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or wilfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering,

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such re-connection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer."

However, having considered the grounds submitted by the prosecution side and the averments made in the application by the petitioner as well as nature of the evidence emerged from the case diary, this Court finds it expedient to grant the petitioner the liberty of pre-arrest bail.

In view of above, the prayer for anticipatory bail is hereby granted.

Accordingly, it is provided that in the event of arrest of the petitioner, named above, he shall be released on **pre-arrest bail**, in connection with the above noted case on furnishing bail bond of **Rs.30,000/-** with one surety of like amount to the satisfaction of the

arresting authority, subject, of course, to the following conditions:

- (i) That the petitioner shall appear before the Investigating Officer within 7 days, failing which, on the 8th day, the anticipatory bail order shall automatically expire;
- (ii) That the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer; and
- (iii) That the petitioner shall refrain from committing any such offence/mistake of similar nature in future.

Breach of any of the above conditions shall render cancellation of the pre-arrest bail in accordance with law.

Return the case diary.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant