

GAHC010164842023



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

Case No. : AB/2642/2023

KAMALESWAR BORDOLOI
S/O SRIDHAR BORDOLOI, R/O VILL-DOMIAGAON, P.S.-MORIGAON, DIST-
MORIGAON, ASSAM, PIN-782105

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MS. G BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

23.08.2023

Heard Ms. G. Borah, learned counsel for the applicant. Also heard Ms. S.H. Bora, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under Section 438 Cr.P.C., is preferred by the applicant Kamaleswar Bordoloi, who has been apprehending arrest in connection with Jagiroad P.S.

Case No.340/2022, under Sections 302/34 IPC, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of one complaint lodged by Smt. Rambha Bharali Tisso on 24.06.2022, before the learned Chief Judicial Magistrate, Morigaon, which was forwarded to the Officer-in-Charge, Morigaon P.S. as per Section 156(3) Cr.P.C. for registering a case, upon which, the present case has been registered and investigation is being carried out. The essence of allegation made in the said complaint is that on 14.02.2022, at about 7 p.m. while a forest patrolling party, under the leadership of Dulal Chandra Bora, Deputy Ranger, Nakhola Beat Forest Office, Jagiroad, was executing regular patrolling duty, then the deceased, Borsing Tisso and others attacked him and the patrolling party then resorted to blank fire in their defence. As a result, miscreant Borsing Tisso sustained bullet injuries on his person and succumbed to the same and another miscreant, namely, Ranjit Singha also got injuries on his person in the said firing.

4. Ms. Borah, learned counsel for the applicant submits that the learned Chief Judicial Magistrate, Morigaon without considering the notification issued by the State Government dated 14.07.2010 has forwarded the complaint to the Officer-in-Charge, Morigaon P.S. for registration of a case and that the learned C.J.M. has also not taken into account the provision of Section 197 Cr.P.C. and that the accused is no way involved with the offence alleged in the complaint and his name is also not there in the complaint, though he was also a member of the patrolling team. Ms. Borah further submits that the applicant is ready to cooperate with the investigating agency and therefore, it is contended to allow this petition.

5. On the other hand, Ms. S.H. Bora, learned Additional Public Prosecutor has produced the case diary before this Court and fairly submits that the materials collected so far in the case diary are inadequate to show complicity of the applicant with the offence alleged and that some of the co-accused have already been given the privilege of pre-arrest bail by this Court vide order dated 30.09.2022 in AB No.2929/2022 and therefore, Ms. Bora submits that the applicant may be directed to appear before the I.O. and to get his statement recorded.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Ms. Bora, learned Additional P.P.

7. In view of the materials collected so far in the case diary and also in view of the submission of the learned Advocates of both the parties, further considering the fact that some of the co-accused have already been enlarged on pre-arrest bail, this Court is inclined to extend the privilege of pre-arrest bail, maintaining parity with the other co-accused. And accordingly, it is provided that in the event of arrest of the present applicant in connection with Jagiroad P.S. Case No.340/2022, under Sections 302/34 IPC, he shall be enlarged on pre-arrest bail on his executing a bail bond of ₹ 50,000/- with one surety of the like amount to the satisfaction of the arresting authority. The above privilege is, however, subject to the following conditions:-

- (i) The applicant shall make himself available for interrogation by the Investigating Officer as and when required;
 - (ii) The applicant 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 from disclosing such facts to the Court or to any police officer; and
 - (iii) The applicant shall not leave the jurisdiction of the learned C.J.M., Morigaon, without prior permission.
8. In terms of above, this anticipatory bail application stands disposed of.
9. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant