

GAHC010166992023



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

Case No. : AB/2628/2023

ANGSHUMAN SARMA
S/O GIRIDHAR SARMA R/O VILL. JAPARKUCHI P.O. CHAOWKBAZAR
NALBARI PRESENTLY POSTED AT BILASIPARA SUB DIVISION PHED AS
ASSISTANT ENGINEER

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P K ROYCHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

29.08.2023

Heard Mr. P.K. RoyChoudhury, learned counsel for the petitioner. Also heard Mr. B. Sarmah, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under section 438 of the Code of Criminal Procedure, 1973 has been filed by the present petitioner, namely, Angshuman Sarma even though no FIR was lodged against him at the time of filing of the instant bail application.

Learned counsel for the petitioner submits that regarding an incident which occurred on 25.07.2023, wherein three labourers who were engaged in Fakiranijhar Piped Water Supply Scheme work under Dhubri district division under programme Jal Jeevan Mission died due to suffocation which occurred due to lack of oxygen, an FIR was lodged.

Learned counsel for the petitioner has submitted that though the said FIR has been lodged against the contractor who executed the said work, however, the local student union bodies and some other media houses protested against the incident and demand the arrest of government officials and the engaged contractor and as the present petitioner, who was working as Assistant Engineer under the Bilasipara, PHE, Division, also apprehended his arrest in connection with the said case.

On the other hand, learned Additional Public Prosecutor submits that by order dated 31.07.2023, this Court requested the learned Additional Public Prosecutor to intimate as to whether any case has been registered against the present petitioner and as to whether any FIR has been lodged against the present petitioner. Today, learned Additional Public Prosecutor submits that a report has been received from the Officer-In-Charge of Bilasipara Police Station, wherein, it is stated that no case has been registered against the present petitioner, namely, Angshuman Sarma under Bilasipara Police Station and therefore, learned Additional Public Prosecutor submits that the apprehension of

the present petitioner of getting arrested does not have any basis.

Learned counsel for the petitioner relying on a Judgment of Hon'ble Supreme Court of India in "*Gurbaksh Singh Vs. State of Punjab*" reported in "AIR 1980 SC 1632," wherein it was observed that filing of an FIR is not a condition precedent to the exercise of the power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR has not been filed.

However, under the facts and circumstances narrated in the anticipatory bail petition as well as in view of the submissions made by learned Additional Public Prosecutor, this Court is of the considered opinion that there is no imminent likelihood of arrest of present petitioner in any case which is registered in connection with the incident cited in the anticipatory bail application.

In view of above, this Court is of the considered opinion that the apprehension as shown by the present petitioner, of getting arrested in connection with the incident cited by him does not have a basis and this application is accordingly disposed of without issuing any order under section 438 of the Code of Criminal Procedure, 1973.

JUDGE

Comparing Assistant