

GAHC010167792023



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

Case No. : AB/2689/2023

HAZRAT ALI
S/O JAMAL ALI
R/O VILL- NO. 2 MAGURMARI
P.S. DHULA
DIST. DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

27.09.2023

1. Heard Mr. A. Ahmed, learned counsel for the petitioner as well as Mr. K.

Baishya, learned Addl. P.P. appearing for the State respondent.

2. The petitioner, namely, Hazrat Ali has filed a subsequent application under Section 438 Cr.P.C with prayer for pre-arrest bail as he is apprehending arrest in connection with Kharupetia P.S. Case No. 86/2023, under Section 120(B)/365/342/384/420 IPC.

3. The FIR lodged by the informant Amizuddin Ahmed unfolds that on 28.02.2023 at about 9 P.M. Hazrat Ali along with the other co-accused named in the FIR on the pretext of a 'Jalsa' called the informant, who confined him in a room instead. After sometime, the informant noticed that 5/6 persons approaching towards the house of the petitioner along with one girl. Then the other accused named in the FIR accosted the informant to undress and they brought the girl and clicked obscene photographs of the girl with the informant with the help of their mobile phones. Thereafter, the accused, named in the FIR, demanded money and also assaulted the informant. The accused along with the petitioner then took the informant in a Maruti car to an ATM and procured the ATM pin number and withdrew an amount of Rs. 1,60,000/- from the ATM.

4. In this manner, the accused robbed Rs. 2,10,000/- from the informant who informed about the incident to a local resident, who confronted the accused. Again on 14.03.2023, the accused, including the present petitioner, returned Rs.

1,40,000/- to the informant but they also threatened the informant with dire consequences. On the same night, four buffaloes were found missing from the cowshed of Sahajamal Mandal and strong suspicion rests on the petitioner as well as the other accused named in the FIR.

5. It is submitted on behalf of the accused that he has been falsely implicated by the informant, who is in the habit of extortion of money by filing false cases and this case too is a false case. It is also submitted that in connection with another case registered as Kharupetia P.S. Case No. 87 of 2023, under Sections 120(B)/420/384 IPC. The accused is a witness against the informant.

6. The learned Addl. P.P. has raised serious objection stating that there are incriminating materials in the case diary against the present petitioner.

7. On the contrary, the learned counsel for the petitioner has submitted that a case has been registered as Kharupetia P.S. Case No. 87 of 2023, under Sections 120(B)/420/384 IPC and the FIR of the case is annexed as Annexure-2. The FIR unfolds that on 05.03.2023, the accused named in the FIR No. 87/2023 held a meeting in the house of Sahajamal Mandal at Khateswar village and in the said meeting an amount of Rs. 2,00,000/- was imposed on the present petitioner as fine and thereafter, Rs. 1,40,000/- was returned to Engil Ali @ Amizuddin Ahmed, husband of the informant, Fatema Begum, who lodged the

FIR No. 87/2023.

8. It is also further alleged through the FIR mentioned above that the accused person threatened not to withdraw the case against the informant's husband, if the entire money is not paid to them and thereafter, the accused persons named in the FIR demanded Rs. 30,000/- from the informant, Fatema Begum as expenses of the case. It is submitted that this FIR 87/2023 clearly reflects the informant's conduct of extortion by false cases.

9. The learned Addl. P.P. has raised objection stating that the cases Kharupetia P.S. Case No. 86/2023 and Kharupetia P.S. Case No. 87/2023 cannot be considered as cross cases.

10. It is also submitted by the learned Addl. P.P. that the import of the sections and the nature of the offence does not admit the petitioner to pre-arrest bail. Earlier his bail was also rejected by this Court. The Kharupetia P.S. Case No. 87/2023 cannot be considered as a new ground.

11. I have considered the submissions at the bar with circumspection and I have also considered the prayer of the petitioner on the ground of parity. The petitioner has pledged to co-operate with the remaining part of the investigation. The petitioner does not appear to be a flight risk as he is a local resident.

12. Considering all aspects and in view of my foregoing discussions, the petitioner is granted pre-arrest bail.

13. In the event of his arrest, the petitioner is to be granted bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the arresting authority,

under conditions that,

- (i) the petitioner will not exercise threats to the witnesses and will not tamper with the evidence,
- (ii) the petitioner will appear before the I/O within 7(Seven) days and co-operate with the investigation, and
- (iii) the petitioner will refrain from such activities with which he has alleged.

In the event of the petitioner failure to abide by the bail conditions, the bail shall stand be cancelled.

Send back the case diary.

JUDGE

Comparing Assistant