

GAHC010178622023



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

Case No. : AB/2862/2023

SAIDUL ISLAM
S/O KASEM ALI,
VILL.- HATIPOTA PART II, P.O.- HATIPOTA, P.S.- CHAPAR, DIST.- DHUBRI,
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR. R BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

22.08.2023

Heard Mr. R. Bora, learned counsel for the applicant and Ms. S.H. Bora, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with Chapar P.S. Case No. 91/2023, under Sections 333/342/353/34 of the IPC, this application under

Section 438 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, Saidul Islam for grant of pre-arrest bail.

3. The said case has been registered on the basis of one F.I.R., lodged by one Bodiot Zaman Sk., on 06.03.2023, to the effect that on the night of 04.03.2023, at about 9.30 pm, one Kasem Ali; Sahjahan Ali; Abdul Hai; Saidul Islam; Aysha Khatun; and Johir Ali called him to the house of Kasem Ali and as soon as he reached there, the accused persons tied him with a post and assaulted him and also rebuked him with abusive words and also threatened him.

4. Mr. Bora, learned counsel for the applicant submits that the allegation leveled against the applicant is false and the applicant is innocent and no way involved with the offence alleged in the F.I.R. Mr. Bora further submits that some of the co-accused have already been granted bail by this Court, vide order dated 20.07.2023, in AB No. 2435/2023. Mr. Bora also submits that the applicant is the Secretary of the Village Defence Party and as such, he is not a public servant and though the case was registered under sections 333/342/353/34 of the IPC, yet, the Sections 333/353 of the IPC are not attracted herein this case, and therefore Mr. Bora contended to allow the petition.

5. On the other hand, Ms. Bora, learned Additional Public Prosecutor, fairly submits that as the Secretary of the Village Defence Party is not a public servant and as such, the offence under Sections 333/353 of the IPC are not attracted herein this case.

6. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on

the record.

7. It appears from the records that the case was registered under Sections 333/342/353/34 of the IPC and the co-accused have already been enlarged on bail by this Court, vide order dated 20.07.2023, in AB No. 2435/2023. Moreover, the informant is not a public servant and as such, there is substance in the submission of the learned counsel for the applicant that Section 333/353 of the IPC are not attracted herein this case.

8. Having regards to above and also having regards to the nature of accusation and the punishment prescribed for the same as well as the submissions so advanced by learned counsel for both the parties, this Court is inclined to extend the privilege of pre-arrest bail to the applicant.

9. Accordingly, it is provided that in the event of arrest of the accused/applicant, namely, Saidul Islam, in connection with Chapar P.S. Case No. 91/2023, under Sections 333/342/353/34 of the IPC, he shall be enlarged on pre-arrest bail on executing a bond of Rs. 25,000/- only with one surety of like amount to the satisfaction of the Investigating Officer.

10. The above privilege is, however, subject to the following conditions:

(i) that the applicant shall make himself available for interrogation by the Investigating Officer as and when required;

(ii) that 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) that the applicant shall not leave the jurisdiction of the learned CJM, Dhubri, without prior permission.

11. In terms of above, this AB stands disposed of, at this motion stage itself.

Comparing Assistant

JUDGE