

GAHC010192222023



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

Case No. : AB/3017/2023

ABDUL HASAN @ ABUL HUSSAIN SEKH
S/O LATE AKBAR ALI SEKH
VILL- BIHADA PART-V (KALACHARIPAR)
P.O. BHUBENESWAR NAGAR,
P.S. KATIGORAH, CACHAR.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

01.09.2023

1. Heard Mr. A. M. Barbhuiya, learned counsel for the applicant and Mr. P. Borthakur, learned Addl. PP, Assam.
2. This anticipatory bail application has been preferred under

Section 438 of Code of Criminal Procedure, 1973, by the present applicant, namely, **Abul Hasan @ Abul Hussain Sekh** praying for grant of pre-arrest bail to the applicant, who is apprehending arrest in connection with Hailakandi PS Case No.159/2018 under Section 366/34 of Indian Penal Code corresponding to G. R. Case No. 372/2018.

3. It is submitted by the learned counsel for the applicant that during the pendency of the investigation the present applicant could not be traced and he was declared absconder by the police and subsequently the police submitted absconder charge sheet against the accused under sections 366/34 IPC. Therefore, apprehending the arrest the present applicant has approached this Court seeking an order under Section 438 of the Code of Criminal Procedure, 1973.

4. Learned counsel for the applicant has submitted that merely filing of charge-sheet in itself is not a bar in exercising power of this Court under Section 438 of the Code of Criminal Procedure, 1973 and even after charge sheet is filed, this Court may issue order under Section 438 of the Code of Criminal Procedure, 1973, if it finds that the applicant has reasonable ground to apprehend arrest and in support of the said contention learned counsel has relied on the ruling of Hon'ble Supreme Court of India "**Bharat Choudhury and Another VBs. State of Bihar and Another**" reported in **2003 8 SSC 78**.

5. Learned counsel for the applicant has also relied on the ruling of Hon'ble Supreme Court of India in **Mahdoom Bava Vs. Central Bureau of Investigation (Order dated 20.03.2023 passed in SLP Crl. No. 376/2023)** wherein the Hon'ble Supreme Court of India observed that in some parts of the country there seems

to be a practice followed in courts to remand the accused to custody the moment, they appear in response to summons.

6. Learned counsel for the applicant submits that in the instant case, the charge-sheet has been laid, inter-alia, under Section 307 of the Indian Penal Code, also where the maximum punishment is imprisonment for life for which normally the Committal Court due to embargo of Section 437 clause 1 of the Code of Criminal Procedure, 1973, read with Section 209 (a) & (b) of Code of Criminal Procedure, 1973 remands the accused to custody if he is not on bail and if he appears before the trial Court in response to the summons issued to him.

7. In view of the above discussion, the instant anticipatory application filed by the present applicant namely, **Abul Hasan @ Abul Hussain Sekh** is hereby disposed of with the observation that the present applicant shall appear before the learned court below within a period of 15 days from the date of this order and if he does so, he shall be allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount to the satisfaction of the learned court below, subject to the conditions:

1. That the applicant shall appear before the Committal Court and learned Trial Court as and when so directed by the said Courts and shall co-operate in the trial.
2. 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 or her from disclosing such facts to the Courts.

9. With the above observation, this instant anticipatory bail application is hereby disposed of.

J U D G E

Comparing Assistant