

GAHC010193312023



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

Case No. : AB/3016/2023

BELLAL SK @ BELLAL HUSSAIN
S/O RABIAL SK
VILL- RAWA PT.II,
P.S. DHUBRI
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR F HAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 29.09.2023

- 1.** Heard Mr. F. Haque, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor appearing for the State of Assam.
- 2.** This application under section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner namely, *Bellal SK. @ Bellal Hussain* who is apprehending his detention in connection with PRC Case No. 1085/2023

corresponding to GR Case No. 217/2022 arising out of Dhubri PS Case No. 74/2022 under Section 305 of the Indian Penal Code.

3. The gist of accusation against the present petitioner is that on 25.01.2022, one Taher Ali, lodged an FIR before In-Charge of B. N. College Road Out Post under Dhubri Police Station, *inter alia*, alleging that the FIR named against the accused, namely, Shahjahan Ali @ Bassu used threaten the minor daughter of the first informant while she used to come to her school and he used to harass her and unable to tolerate the harassment of the accused the grand-daughter of the informant committed suicide on 25.01.2022 and accordingly, Dhubri PS Case No. 74/2022 was registered under Section 305 of IPC. After completion of the investigation, charge-sheet was laid against the two accused persons including the present petitioner and the main accused, namely, Shahjahan Ali.

4. Learned counsel of the petitioner has submitted that though the Police never enquired anything from the present petitioner during the course of investigation, however, the Police has laid the charge-sheet against the present petitioner showing him as an absconder in the charge-sheet. It is also submitted by learned counsel for the petitioner that though the learned Committal Court i.e. the Court of learned SDJM(S), Dhubri has only issued summons to the present petitioners fixing next date as 25.10.2023. However, as the cognizance of offence has been taken by the Court under Section 305 of the IPC for which the maximum punishment prescribed is death, hence, the Committal Court is unlikely to grant bail to the present petitioner on his appearance before the said Court due to the embargo of Section 437(1)(ii) of the Code of Criminal Procedure, 1973.

5. Learned counsel for the petitioner has cited a ruling of Hon'ble

Supreme Court of India in “***Bharat Chaudhary –Vs- State of Bihar***” reported in “***(2003) 8 SCC 77***” to support his submission even if after laying of the charge-sheet, the Court may grant anticipatory bail.

6. I have heard the learned Additional Public Prosecutor who has placed the scanned copy of the record of PRC Case No. 1085/2023 and I have also heard the submissions of learned counsel for both sides and have perused the scanned copy of the case record.

7. It also appears that the charge-sheet has been laid against the present petitioner under Section 305 of the Indian Penal Code showing the present petitioner as an absconder. It also appears that the Trial Court has rightly issued summons to the present petitioner instead taking any coercive measure at the first instance for appearance of the present petitioner. However, it is also to be noted that as the charge-sheet has been laid under Section 305 of the Indian Penal Code, learned Committal Court is unlikely to grant bail to the present petitioner on his appearance before the said Court on 25.10.2023 due to embargo of Section 437(1)(ii) read with Section 209(a) of the Code of Criminal Procedure, 1973. Hence, the petitioner is directed to appear before the learned Committal Court i.e. learned SDJM(S), Dhubri on the next date for the said case i.e., 25.10.2020 and, if he does so, learned SDJM(S), Dhubri shall allow him to go on bail of Rs.20,000/- (Rupees Twenty Thousand) only with one local surety of like amount, subject to the condition that the petitioner shall cooperate in his trial.

8. With this observation, this anticipatory bail application is disposed of.

JUDGE

Comparing Assistant