

GAHC010201622023



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

Case No. : AB/3142/2023

MD. SAMSUL HAQUE
S/O- LATE MUBOSIL ALI, VILL.- RATANPUR, DUHALIA PART-II, P.O.
DUHALIA, P.S. PATHARKANDI DIST. KARIMGANJ, ASSAM, PIN- 788724.

VERSUS

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

Advocate for the Petitioner : MR. A K TALUKDAR

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

17.10.2023

Heard Mr A K Talukdar, learned counsel for the petitioner, Md Samsul Haque.

2. The petitioner has filed this application under Section 438 CrPC, with a prayer for pre-arrest bail, apprehending his arrest in connection with GR Case No. 2596 of 2023, under Sections 302/34 IPC, read with Section 27 of the Arms Act.

3. Heard Ms A Begum, learned Additional Public Prosecutor for the State of Assam.
4. Charge-sheet has been laid against the petitioner under Sections 302/34 IPC, read with Section 27 of the Arms Act.
5. The case in brief is that on 10.10.2020, an ejahar was lodged with the allegation that on the morning of 09.10.2020, the accused persons named in the FIR, including the petitioner as one of the accused formed an unlawful assembly and armed with an illegal gun went to the nearest Gillaitilla Hills for hunting wild boar and killed one Monoranjana Deb @ Nitush by firing the gun.
6. It is submitted that the petitioner was shown as absconder. The petitioner has not been incriminated by any of the witnesses whose statements under section 164 CrPC have been recorded. It is submitted that the petitioner is innocent and the victim died due to misfiring of the gun. It is submitted that during hunting of wild boar, the gun was fired towards the boar, but accidentally, the gun hit the victim. The petitioner is willing to cooperate with the investigation as well as with the trial.
7. The learned Additional Public Prosecutor has raised serious objection stating that the petitioner is also booked under Arms Act.
8. The learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in ***Aman Preet Singh –vs- CBI***, reported in **2021 SCC Online SC 941**, wherein it has been observed that-

"10. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170, Cr.P.C. which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to

accept the charge sheet forthwith and proceed in accordance with the procedure laid down under Section 173, Cr.P.C. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to arrest, he is required to record the reasons as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in Sub-para (iii) above by the High Court are in the nature of caution.

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12. *If we may say, the observation hereinabove would supplement our observations made in **Siddharth vs. State of Uttar Pradesh & Anr.(Criminal Appeal No. 838/2021); 2021 SCC OnLine SC 615** and must be read together with that judgment.*

13. *The given factual scenario completely fits the aforesaid as the appellant was never taken into custody during investigation. Suffice to say that it would be a fit case for the trial Court to grant bail to the appellant on the next date on terms and conditions to its satisfaction. As a measure of precaution, largely arising from the manner of submission of Public Prosecutor before the trial Court, it is made clear that the interim protection granted by this Court would continue till the appropriate order is passed by the trial Court.*

9. It is also submitted that the statements of the witnesses under Section 161 CrPC does not at all incriminate the petitioner.

10. I have considered the submissions at the Bar with circumspection and I have perused the scanned copies of the LCR.

11. Vide order dated 22.09.2023, bailable warrant has been issued against the present petitioner.

12. Considering all aspects and in the light of the decision of Hon'ble the Supreme Court in ***Aman Preet Singh (supra)***, the petitioner is directed to appear before the learned Elaka Magistrate/JMFC-II, Karimganj, within 15 days from today and apply for bail and the learned Elaka Magistrate/JMFC-II, Karimganj, may consider the bail petition and enlarge the petitioner on bail of Rs. 50,000/- with a suitable security of the like amount subject to the conditions imposed by the learned Magistrate.

13. Bail Application stands disposed of.

JUDGE

Comparing Assistant