

GAHC010203272023



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

Case No. : Bail Appln./3226/2023

BAHARUL ISLAM MAZUMDAR @ PAPPU
S/O- ALAUDDIN MAZUMDAR, R/O- MADHURBAND, AMERIA LANE, P.S.
SILCHAR, DISTRICT- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. P K DEKA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 27-09-2023

1. Heard Mr. P.K. Deka, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor appearing for the State of Assam as well as Ms. L. Wazeeda, learned counsel appearing for the informant.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Baharul Islam Mazumdar@Pappu, who has been detained behind the bars since 09.07.2023 (since last 80 days), in connection with Silchar Police Station Case No. 491/2023 under Sections 120B/302 of the Indian Penal Code, 1860.

3. The gist of the accusation in this case is that on 12.03.2023, one Manjurul Islam Barbhuiyan had lodged an FIR before the Officer-In-Charge of Silchar Sadar Police Station, *inter-alia*, alleging that the accused persons named in the FIR including the present petitioner had been trying to forcefully possess the land of the first informant and in this regard the first informant has filed various cases against the accused persons. It is alleged in the FIR that on 11.03.2023, in furtherance of the criminal conspiracy of the accused persons named in the FIR, the accused No.1 named in the FIR, namely Apu Mazumdar attacked the minor son of the informant and caused severe injuries and when the wife and the mother of the informant came out of their house, the accused persons fled away. The first informant immediately took the victim to the police station, therefrom he was taken to Silchar Medical College and Hospital for treatment, where he subsequently succumbed to his injuries. On receipt of the said FIR, Silchar Police Station Case No. 491/2023 was registered.

4. Learned counsel for the petitioner has submitted that the bare perusal of the FIR would show that it is the accused No.1 Apu Mazumdar, against whom the main allegation has been made therein and the present petitioner has been falsely implicated in this case and he is innocent. Learned counsel for the petitioner has also submitted that considering the period of detention already undergone by the petitioner, he may be allowed to go on bail and that the petitioner is ready to co-operate and shall abide by any conditions which are

imposed if the bail is granted.

5. On the other hand, Mr. R.J. Baruah, learned Additional Public Prosecutor has submitted that the case has been already charge-sheeted and he opposed the grant of bail to the present petitioner. He also placed the scanned copies of case record of PRC case No. 789/23 as well as the case diary of Silchar Police Station Case No. 491/2023, which was called for in this case, before the Court. It is submitted by learned Additional Public Prosecutor that there are sufficient incriminating materials against the petitioner regarding his involvement in the alleged offence and accordingly he opposed the prayer for grant of bail to the present petitioner at this stage.

6. Ms. L. Wazeeda, learned counsel for the informant also vehemently opposed the prayer for grant of bail to the present petitioner on the ground that the offence involved in this case is heinous in nature and there are sufficient incriminating materials against the present petitioner.

7. I have perused the materials available on record including the scanned copies of the case record of PRC case No. 789/23 as well as the case diary of Silchar Police Station Case No. 491/2023 requisitioned from the Trial Court and also considered the submissions made by learned counsel for both the sides.

8. As a detailed elaboration of the evidence available on record, at the stage of consideration of an application for bail has to be avoided in as much as same may have an effect on the rights of the parties and the trial, hence, I am refraining myself from a detailed discussion of the evidence available on record at this stage. However, on perusal of the case record, it appears that though the offence involved in this case is heinous in nature, however, the incriminating materials available on record are mainly against the accused No.1 Apu Mazumdar. The chargesheet has already been laid in this case. Though, the

petitioner happens to be brother of the main accused, however, considering the nature of evidence available against the present petitioner, on record, his further custodial detention does not appear to be necessary for fair completion of the trial if he cooperates in the trial.

9. In view of above discussion, the petitioner Baharul Islam Mazumdar@Pappu is allowed to go on bail of ₹ 50,000/-with one surety of like amount to the satisfaction of Learned Sessions Judge, Cachar, Silchar with following conditions:-

A. The petitioner 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 such person from disclosing such facts before the Trial Court during trial.

B. The petitioner shall cooperate in his trial and shall make himself available before the Trial Court as and when so required by the Trial Court.

10. Learned Sessions Judge, Cachar, Silchar or the learned Presiding Judge of the trial may impose any additional condition if deemed necessary at any stage of trial.

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

JUDGE

Comparing Assistant