

GAHC010204492023



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

Case No. : Crl.Pet./960/2023

DHRUBAJYOTI CHOUDHURY
S/O HITESWAR CHOUDHURY
R/O CHANDMARI COLONY
HOUSE NO. 456, P.S.CHANDMARI,
DIST. KAMRUP (M), PIN-781003

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 13.09.2023

Heard Mr. K. M. Choudhury, learned Senior Counsel assisted by Mr. M. Ahmed, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State respondent.

2. The present petition is filed under Section 482 of the Code of Criminal Procedure *read with* Section 397/401 of the Code of Criminal Procedure against the bail order dated 05.08.2023, passed in B.A. No. 583/2023, whereby, the learned Additional Sessions Judge FTC No. 3, Kamrup (M), Guwahati, had granted bail to the petitioner with the condition that the petitioner shall make payment of advance amount of Rs. 51 Lakhs to the informant within 19.09.2023 failing which the bail order shall automatically stands cancelled.

3. It is submitted by Mr. K. M. Choudhury, learned Senior Counsel for the petitioner, that the bail was granted by the learned Additional Sessions Judge FTC No. 3, Kamrup (M), Guwahati, in Paltanbazar P.S. Case No. 291/2023, which was registered under Sections 120B/420/468/506 of the Indian Penal Code, after perusal of the Case Diary, however with some conditions, wherein as per condition No. 1, the accused was directed to make payment of advance amount of Rs. 51 Lakhs to the informant within 19.09.2023 failing which the bail order shall automatically be cancelled. It is submitted by the petitioner that such kind of condition cannot be incorporated in the bail conditions and the same is illegal and there are several judgments passed by the Hon'ble Supreme Court in this regard, wherein, the Hon'ble Supreme Court has expressed the view that such kind of conditions cannot be imposed while granting bail. In this context, he relied on a decision of Hon'ble Apex Court passed in **Subhash Chouhan Vs. Union of India (Criminal appeal No. 186/2023)**, wherein it has been held that "*considering the above facts, in our considered opinion, the condition directing the appellant to deposit a sum of Rs. 70 Lakhs is not liable to be sustained and is hereby set aside*". The learned counsel further relied on

another decision of Hon'ble Apex Court passed in **Yashik Jindal Vs. Union of India (Criminal Appeal No. 2982-2983/2023)**, wherein also, the Hon'ble Apex Court has expressed the same view.

4. In this context, the learned Additional Public Prosecutor, Ms. Bora, has fairly submitted that such kind of conditions should not be incorporated in the bail order and accordingly raised no objection in setting aside the condition No. 1 in the bail order dated 05.08.2023, passed by the learned Additional Sessions Judge FTC No. 3, Kamrup (M), Guwahati.

5. Considering the submissions made by the learned counsels for both sides and also considering the view of the Hon'ble Apex Court, I find that such kind of conditions should not be incorporated in bail order and accordingly, the condition No. 1, wherein the accused was directed to make payment of advance amount of Rs. 51 Lakhs to the informant- Pallab Das within 19.09.2023 failing which the bail order shall automatically stands cancelled, is hereby set aside. However, the other conditions will remain intact.

6. With the above observation and direction, this criminal petition stands disposed of.

JUDGE

Comparing Assistant