

GAHC010205052023



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

Case No. : Bail Appln./3200/2023

ABUL KALAM
S/O TOMSER ALI R/O KOYAKUCHI P.S BARPETA DIST. BARPETA ASSAM

VERSUS

THE STATE OF ASSAM
REP .BY THE PP, ASSAM

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

13.09.2023

Heard Mr. S.M. Abdullah P, learned counsel for the accused and also heard Mr. K.K. Parasar, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 is preferred by accused, namely, Abul Kalam, who has been languishing in jail hazot since 01.09.2023, in connection with Hatigaon P.S. Case No.285/2023, under Section 379 IPC,

for granting bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of one FIR lodged by one Tanveer Alam Khan on 30.08.2023. The essence of allegation made in the FIR is that on 29.08.2023, at about 3:20 a.m., some unknown miscreants have entered into his house premises and stolen away electric wires of worth ₹ 60,000/- and the said incident has been captured in the CCTV footage.

4. Mr. Abdullah, learned counsel for the accused, submits that the accused was arrested on 01.09.2023, and since then he has been languishing in jail hazot for last 12 days and that nothing is recovered from his possession and one of the co-accused has already been enlarged on bail by this Court vide order dated 11.09.2023, in Bail Appln. No.3149/2023, and maintaining the parity with the accused of the aforesaid bail application, Mr. Abdullah contended to enlarge the present accused on bail.

5. On the other hand, Mr. K.K. Parasar, learned Additional Public Prosecutor has opposed the petition and contended to call for the case diary.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the order dated 11.09.2023, passed in Bail Appln. No.3149/2023.

7. It appears that the accused has been languishing in jail hazot since 01.09.2023, and the forwarding report dated 01.09.2023, indicates that the accused is the receiver of the stolen property, but the said forwarding report reveals nothing about recovery of any stolen article from the possession of the present accused.

8. Having considered the submission of learned Advocates of both sides, and also considering the materials placed on record, further custodial detention of the accused seems to be not warranted here in this case, and therefore, balancing the period of detention with that of the nature and gravity of the offence, this Court is inclined to allow this petition. It is provided that on furnishing a bail bond of ₹ 50,000/- with one surety of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup(M),

the accused be enlarged on bail in connection with Hatigaon P.S. Case No.285/2023, under Section 379 IPC.

9. In terms of above, this bail application stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant