

GAHC010218772023



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

Case No. : AB/3187/2023

ABDUL MAZID
S/O- LATE MONTAJ ALI
PERMANENT R/O- P.O. BATADRAVA
PRESENT ADDRESS- SOUTH HAIBARGAON
WARD NO.5
P.S. NAGAON SADAR
DIST.- NAGAON
ASSAM
PIN- 782001

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR

Advocate for : MR. R P SARMAH
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 11.10.2023

Heard Mr. R.P. Sarmah, learned Senior counsel assisted by Mr.
P.N. Sharma, learned counsel for the petitioner. Also heard Mr. R.R.

Kaushik, learned Additional Public Prosecutor for the State.

This is an application filed under **Section 438 Cr.P.C.**, praying for pre-arrest bail by the petitioner, namely, **Abdul Mazid**, in connection with **Dhing P.S. Case No. 89/2023**, registered under **Section 120(B) of IPC r/w Section 25(1A)/29 of the Arms Act**.

It is submitted by the learned Senior counsel for the petitioner that the informant lodged an FIR against the petitioner by alleging that one handmade pistol along with two round of ammunitions was kept concealed in the house of one Anarul Islam. Subsequently, the police visited the house of Anarul Islam and one handmade pistol and two round of ammunitions were recovered from his house. It is further submitted by the learned Senior counsel for the petitioner that the petitioner is no way connected in the instant case. It is also submitted that on the basis of the FIR, the petitioner was earlier arrested by the police and subsequently, after 48 hours, he was produced before the learned trial court which is violation of law and thereafter, bail was granted by the learned Sessions Court, Nagaon. Subsequently, on perusal of the case diary, bail was cancelled by observing that the petitioner along with some other accused planned to procure a pistol at the instance of accused Abdul Majid. The petitioner also made certain payments for that purpose and engaged another person to procure the pistol who in turn procured the same. Under such backdrop and considering the nature of offence, the benefit of pre-arrest bail may be extended to the petitioner.

On the other hand, Mr. R.R. Kaushik, learned Additional Public Prosecutor for the State has submitted that the petitioner is the

master mind of the case. It is also submitted that one gun was planted/kept in the house of Anarul Islam with the assistance of the petitioner along with other accused. The petitioner paid the amount of procuring the gun. The learned Addl.P.P. has raised strong objection in granting the privilege of pre-arrest bail to the petitioner. Therefore, the prayer of the petitioner may not be considered at this stage.

I have considered the submissions made by the learned counsel for the parties. I have also perused the case diary.

It reveals from the case diary that the petitioner was earlier arrested by the police and produced before the court after 48 hours. It also reveals that one pistol and two round of ammunicions were recovered and seized from the house of Anarul Islam and not from the present petitioner. It is also alleged that the petitioner along with other accused hatched a conspiracy against one Anarul Islam, placed a handmade pistol along with two rounds of ammunicions in the house of Anarul Islam. The investigating officer has not collected the necessary document regarding payment of any money by the petitioner. It also appears that the petitioner was earlier granted bail and his statement was also recorded by the police and during the period of bail, there is no whisper in the case diary that he had not cooperated with the investigation.

Considering the materials available in the case diary as well as the documents available on record, this Court finds that custodial interrogation of the petitioner is not required, therefore, he is granted the privilege of pre-arrest bail.

Accordingly, it is provided that in the event of arrest of the petitioner, named above, in connection with **Dhing P.S. Case No. 89/2023**, registered under Section **120(B) of IPC r/w Section 25(1A)/29 of the Arms Act**, he shall be released on furnishing bail bond of **Rs.20,000/-** with **a suitable surety** of the like amount, to the satisfaction of the arresting authority.

The direction for pre-arrest bail is subject to the conditions that the petitioner:

(a) shall appear before the Investigating Police Officer within seven days from today and shall co-operate with the investigation;

(b) 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 him from disclosing such facts to the Court or to any police officer.

(c) shall not commit such offence as alleged in the FIR in future.

That being so, if the petitioner violates any of the above condition(s) in future, the learned Public Prosecutor shall apprise this Court to cancel the bail order.

The anticipatory bail application stands disposed of accordingly.

Return the case diary.

JUDGE

Comparing Assistant