

GAHC010211332022



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

Case No. : AB/3065/2022

MISBAHBUR RAHMAN TALUKDAR @ SIPAR@ MISBAH TALUKDAR
S/O- JAMAL UDDIN TALUKDAR,
VILL- SINGGAON, P.S -LANKA,
DIST- HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 02-01-2023

Heard Mr. N. Uddin, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Misbahadur Rahman Talukdar @ Sipar @ Misbah Talukdar has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Lanka Police Station Case no. 394/2022, registered for the offence under Section 326, Indian Penal Code [IPC].

3. In the First Information Report [FIR], lodged on 19.09.2022, the informant has alleged that at around 07-00 p.m. on 15.09.2022, his father, who is a driver by occupation, was attacked by the petitioner and other drivers. As a result, the informant's father sustained serious injuries on his hands and legs. The informant has mentioned that he had come to know that both the legs of his father were fractured as a result of the physical assault.

4. Mr. Uddin, learned counsel for the petitioner has submitted that the projection made by the informant as regards physical assault and consequent fracture on both the legs of the informant's father are not true.

5. Mr. Sarma, learned Additional Public Prosecutor who has received the case diary, has submitted that the case diary contains a report of the I.O. of the case to the effect that the informant and the alleged injured person had failed to produce any medical report as regards fracture of the legs, as alleged by them. The eye-witness accounts, however, go to corroborate about the physical assault by the petitioner on the informant's father.

6. Having considered the materials in the case diary, collected during the course of investigation carried out so far, it appears that the fight between the two ensued because of some dispute between them. In the absence of any material regarding sustaining of any grievous injury by the informant's father till date, this Court is, thus, of the considered view that the petitioner has made out a case for grant of the benefit under Section 438, CrPC. This Court is of the view that the petitioner's custodial interrogation appears not necessary for the purpose of carrying out further investigation into the case and his release on pre-arrest bail, at this stage of investigation, is unlikely to bring any adverse effect in the course of further investigation, provided he extends his assistance and co-operation in the further investigation of the case by joining the investigation.

7. Accordingly, it is provided that in the event of arrest of the petitioner viz. Misbahadur Rahman Talukdar @ Sipar @ Misbah Talukdar in connection with Lanka Police Station Case no. 394/2022, he shall be released on bail on furnishing a bail bond of ₹ 25,000/- with one local surety of the like amount, to the satisfaction of the arresting authority, subject to the

conditions that :

[i] the petitioner shall appear before the Investigating Officer [I.O.] of the case within 7 [seven] days from today and shall thereafter, appear before the I.O. of the case as and when his presence is called for;

[ii] the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer; and

[iii] the petitioner shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.

8. The application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant