

GAHC010215102023



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

Case No. : Bail Appln./3397/2023

MD. SALAM ALI
S/O- LATE NUR ISLAM ALI, R/O- VILL.- TAPATOLI, P.S. SONAPUR, DIST.
KAMRUP(M), ASSAM, PIN- 782403.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P., ASSAM

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

25.09.2023

Heard Mr. M.A. Sheikh, learned counsel for the accused and also heard Mr. P. Borthakur, 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, Salam Ali, who has been languishing in jail hazot since 05.08.2023, in connection with Khetri P.S. Case No.135/2023, under Section 379/411/34 IPC read with Section 7/13 of the Assam Cattle Preservation Act, 2021, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of one FIR lodged by Head Constable Radha Kanta Basumatary of Khetri P.S. on 05.08.2023. The essence of allegation made in the FIR, is that acting on a tip off he and the other staff have apprehended the accused while he was taking 13 nos. of cows to Meghalaya by crossing Umsiang river through Topatoli area.

4. Mr. Sheikh, learned counsel for the accused, submits that the accused was arrested on 05.08.2023, and since then he is behind the bar for last 52 days. Mr. Sheikh further submits that the cattles have already been seized and the I.O. has already completed investigation and submitted charge-sheet on 31.08.2023, and that the accused has applied for bail before the learned Court below, but the learned Court below has dismissed his prayer and therefore, the accused has approached this Court. Mr. Sheikh therefore, contended to allow the petition.

5. On the other hand, Mr. P. Borthakur, learned Additional Public Prosecutor has opposed the petition on the ground that the forwarding report reveals complicity of the accused with the offence alleged and that the charge-sheet has been submitted before the learned Court below and the accused may be directed to approach the learned Court below for granting bail.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record.

7. It appears that the accused was arrested on 05.08.2023, and since then he is behind the bar for last 52 days. Further it appears that investigation has already been completed and the I.O. has laid charge-sheet before the learned Court below against the accused. Since charge-sheet has been submitted, there is no question of hampering investigation or tampering the witnesses. Now trial will start and the accused has to be prepared his defence.

8. Having regards to above, and also balancing the period of detention with the

nature and gravity of the offence, this Court is inclined to allow this petition. Accordingly, 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 Khetri P.S. Case No.135/2023, under Section 379/411/34 IPC read with Section 7/13 of the Assam Cattle Preservation Act, 2021.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant