

GAHC010215782023



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

Case No. : Bail Appln./3443/2023

ASHIQUL ISLAM
S/O- MD. ABDUL KARIM, R/O- VILLAGE- RAJGARH, P.S. TEZPUR,
DISTRICT- SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MD. I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

09.11.2023

Heard Mr. I. Hussain, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor, Assam.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Ashiquil Islam, who has been detained behind the bar since 02.08.2023 (since last 98 days) in connection

with Sessions Case No. 203/2023 pending before the Court of learned Sessions Judge, Sonitpur corresponding to Chariduar P.S. Case No. 168/2015 under Sections 406/34/302/201/392 of the Indian Penal Code.

3. The learned counsel for the petitioner has submitted that during the investigation period, the petitioner was on bail and after filing of the charge sheet, summons were issued to him and he engaged a counsel to represent him before the learned Committal Court. However, he defaulted in appearing before the learned Committal Court due to Covid which was prevalent at that point of time. It is further submitted by the learned counsel for the petitioner that due to default of the present petitioner in appearing before the learned Committal Court, the Court has issued non-bailable warrant of arrest and without first taking recourse to bailable warrant of arrest and therefore he was arrested on 03.08.2023 and since then he is languishing behind the bar. Learned counsel for the petitioner has submitted that the petitioner is willing to cooperate in the trial under any condition which may be imposed by this Court.

4. On the other hand, learned Additional Public Prosecutor, Assam submits that the conduct of the petitioner shows that he is not cooperating as he defaulted after receipt of summons and even after appearing before the learned Committal Court by engaging a Counsel. Learned Additional Public Prosecutor, Assam has opposed the grant of bail to the present petitioner.

5. I have considered the submissions made by the learned counsel for both the sides and having gone through the scanned copy of the case records of Sessions Case No. 203/2023 as well as GR Case No. 3203/2015. It appears that the petitioner had engaged a counsel to represent before the learned Committal Court and he had filed a petition before the learned Committal Court on 30.07.2018 which was allowed. However, thereafter, he defaults, it also appears

that on the next date i.e. 24.01.2019, the learned Committal Court issued non-bailable warrant of arrest against the present petitioner without taking recourse to issuance of bailable warrant of arrest against him. It also appears from the records that the trial is pending at the stage of framing of charges and since last four days on which the case was fixed for framing of charges, the case has not been progressed.

6. Considering the fact that the petitioner has been detained behind the bar for the last 98 days and also considering the reasons shown by the learned counsel for the petitioner for default in appearing before the learned Committal Court and also considering the fact that the petitioner is ready to cooperate the trial, this Court is of the considered opinion that his further custodial interrogation may not be necessary if he cooperate in his trial.

7. In view of the above, the accused, namely, Ashiqul Islam is allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount subject to the satisfaction of the learned Sessions Judge, Sonitpur, who may add or invoke any other additional bail condition before accepting the bail bond.

8. With the above observations, this bail application is accordingly disposed of.

JUDGE

Comparing Assistant