

GAHC010217572023



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

Case No. : Bail Appln./3462/2023

VIVEKANANDA PATHAK
S/O SRI PURNENDU PATHAK,
VILL.- KAHIKUCHI, P.O. AND P.S.- AZARA, DIST.- KAMRUP (M), ASSAM,
PIN- 781017.

VERSUS

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

Advocate for the Petitioner : MR P KATAKI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 06.10.2023

Heard Mr. P. Kataki, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Additional Public Prosecutor for the State.

This bail application has been preferred under Section 439 of Code of Criminal Procedure, 1973, praying for bail of petitioner, namely, Vivekananda Pathak who has been detained behind the bar since 18.09.2023 in connection with Serfanguri P. S. Case No. 45/2023 corresponding to G. R. Case No. 672/2023 under Section 302/201/34 of the Indian Penal Code.

The gist of accusation against the present petitioner is that on 17.09.2023, one Ms. Anjuli Narzary lodged an FIR before the Officer-in-Charge of Patgaon Outpost, under Kokrajhar Police Station, *inter-alia*, alleging that on 17.09.2023, the husband of the first informant namely, Hemanto Narzary was shot dead by the Forest NGO Force named Tarun Brahma and Khagen Basumatary which were led by Vivekananda Pathak i.e., the present petitioner who is Ranger of Jharbari Forest Range

On receipt of the said FIR, Serfanguri P. S. Case No. 45/2023 was registered.

Mr. P. Kataki, learned counsel for the petitioner has submitted that the present petitioner is the Ranger of Jharbari Forest Range Kokrajhar and on 16.09.2023 at about 11.00 PM when the petitioner was leading a team in the range after receiving an input from reliable source that some timber smuggler were operating within the area of Ride No.1, Mahal Road an ambush occurred at 2.00 PM after noticing a group of miscreants carrying timber loads equipped with arm, dao, axe, khukri etc.

When the said timber smugglers were intercepted and were asked to surrender, they started attacking the team led by the present petitioner and one of the said smuggler attacked the one of the staff member of the team led by present petitioner with a dao and under such circumstances, the team had to

take recourse to some blank fires and later on, it was noticed that during the firing, one Hemanto Narzary got injured and he died at the spot during random fire.

Learned counsel for the petitioner has submitted that the present petitioner being a Forest Range Officer was only performing his official duty and in this regard, he has been protected by a notification of the Government of Assam dated 14.07.2010, wherein it is provided that whenever firing is restored by any personnel mentioned in Clause-(a) of the said notification which includes Forest Ranger, such, incident shall be inquired by an Executive Magistrate of locality and any proceeding including institution of criminal case of any nature or affecting any arrest can be initiated by police only if it is held as a result of such magisterial injury that the use of fire arm has been unnecessary, unwarranted and excessive and such report has been examined and accepted by the Government.

The learned counsel for the petitioner has submitted that in the instant case though a magisterial enquiry was directed by order dated 17.09.2023 by the order of District Magistrate, Kokrajhar, however, without waiting for the report of such magisterial enquiry, the FIR was lodged and the present petitioner was arrested which is in violation of the notification of the Government.

Learned counsel for the petitioner has also submitted that otherwise also the petitioner has been detained behind the bar since 23 days and on that ground has prayed to go on bail.

on the other hand, Mr. K. Baishya learned Additional Public Prosecutor has produced the case diary of Serfanguri P. S. Case No. 45/2023 and has submitted that the Investigating Officer has started the investigation. However,

he has also submitted that the report of the magisterial enquiry, which was ordered on 17.09.2023 by the District Magistrate, Kokrajhar in pursuant to the Government notification dated 14.07.2010 is still awaited.

I have considered the submissions made by learned counsel for both sides and perused the materials in the case diary, it appears that though there is an allegation of against the present petitioner in the FIR lodged by Hemanto Narzary.

However, it also appears that the present petitioner being a Forest Ranger prima facie appears to be performing his official duty on the date of alleged incident and it also appears that the magisterial enquiry which was ordered on 17.09.2023 is yet to be concluded and report is yet to be awaited. Therefore, in pursuant to the notification dated 14.07.2010, the present petitioner who is admittedly a Forest Ranger should not have been arrested.

In view of the above discussion the petitioner namely, Vivekananda Pathak, is hereby allowed to go on bail Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kokrajhar with the following conditions:

- i. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to the first informant or any other person who is acquainted with the facts of the case, so as to dissuade such persons from disclosing such facts to the Investigating Officer of the said case or any Court.
- ii. That the petitioner shall co-operate with the Investigating Officer of the Serfanguri P. S. Case No. 45/2023.

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

Sent back the case diary.

JUDGE

Comparing Assistant