

GAHC010219332022



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

Case No. : AB/3186/2022

MD. SAHED ALI
S/O MD. SAHAJADA HUSSAIN,
R/O WARD NO. 4(PART),
P.S.- JORHAT,
DIST.- JORHAT, ASSAM, PIN- 785001.

VERSUS

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

Advocate for the Petitioner : MR. D BARUAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 16.02.2023

Heard Mr. D. Baruah, learned counsel for the petitioner. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State of Assam.

This is an application under Section 438 of the Code of Criminal Procedure, praying for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with Golaghat P.S. Case No. 261/2022, under Sections 379/34 of the Indian Penal Code.

It is to be mentioned here that this Court, vide order dated 02.11.2022, has extended the privilege of interim pre-arrest bail to the accused/petitioner.

It appears that the updated Case Diary was called for vide order dated 12.12.2022, as the statement of the accused/petitioner was not available in the Case Diary and also considering the submission of the learned counsel for the petitioner that the statement of the accused/petitioner was already recorded on 28.11.2022, but the same was not available in the Case Diary.

Today, the updated Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioner, Mr. D. Baruah, that the petitioner is innocent and no way connected with the alleged offence. He belongs to Jorhat District and he is not the person who was being searched for in connection with this case. Further, it is submitted that the petitioner has already appeared before the I.O. and his statement has already been recorded under Section 161 Cr.P.C.

On the other hand, the learned Additional Public Prosecutor, Mr. K. K. Das, producing the Case Diary before this Court, has submitted that the statement of the accused/petitioner is not available in the Case Diary and more so, there are sufficient incriminating materials against the present accused/petitioner in the Case Diary and some of the witnesses have also identified the present accused/petitioner while he came to the place of occurrence and took the road roller by cutting it into pieces with the help of gas cutter machine. Further, the scrap shop owner could properly identify the present accused/petitioner. In the same time, it also reveals from the statement of the witnesses that there are 2-3 numbers of witnesses who have seen the accused/petitioner while arriving there and taking the roller and they stated that they will be able to identify the person who took the roller. From the statement of the witnesses, it also reveals that they offered Rs. 10,000/- to a person and asked him to brought the roller from Bokolai to Titabor Scrap.

After hearing the submissions of learned counsels of both sides, I have carefully gone through the Case Diary and it is seen that sufficient incriminating materials have already been collected by the I.O. against the present accused/petitioner. More so, it is seen that the statement of the accused/petitioner has not been recorded by the I.O. under Section 161 Cr.P.C., though he was granted with the privilege of interim pre-arrest bail by this Court vide order dated 02.11.2022. Further, as per the bail objection filed by the I.O., it is seen that the entire theft was committed under the leadership of the present accused/petitioner and if the accused/petitioner is granted with pre-arrest bail or enlarged on bail, there is every probability and possibility of hampering or tampering the entire investigation of this case and some other

associates are yet to be nabbed in connection with this case and accordingly, the I.O. has raised his bail objection for the present accused/petitioner.

Thus, considering the entire materials in the Case Diary, bail objection filed by the I.O., viz-a-viz the conduct of the accused/petitioner, and also considering the nature and gravity of the offence and the punishment prescribed for the same, this Court is of the view that custodial interrogation of the present accused/petitioner may be necessary in the interest of just and proper investigation of the case. Accordingly, the petition for pre-arrest bail is rejected and the interim pre-arrest bail order, granted by this Court vide order dated 02.11.2022, is hereby stands vacated.

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

The Case Diary be sent back.

JUDGE

Comparing Assistant