

GAHC010222742022



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

Case No. : AB/3239/2022

ABDUL KHALEK
S/O TOMSER ALI
R/O VILL- MOLAKHAWA
P.S. SUKCHAR, SUB-DIV. SOUTH SALMARA, DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR A W AMAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 17-02-2023

Heard Mr. S. Nawaz, learned counsel for the applicant. Also heard Mr. P. Borthakur, learned Public Prosecutor representing the State respondent.

This is an application under Section 438 of the Code of Criminal Procedure, 1973, for grant of pre-arrest bail to the accused/applicant, who is apprehending arrest in connection with Mankachar P.S. Case No. 227/2022, under Sections 120B/406/420/34 of the Indian Penal Code.

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

The learned counsel for the applicant has stated a brief fact of the case is that, one Sri Motleb Ali was engaged in a business transaction with the applicant whereby the informant sold the vehicle to the applicant. The informant had acquired the vehicle by a notarized sale deed from the original owner, Sanjay Mishra. The informant subsequently, agreed to sell the vehicle to the applicant for an amount of Rs. 5,10,000/- (Rupees five lakhs ten thousand) only, whereafter, the applicant registered the vehicle under his own name in Meghalaya with the concerned authority. Thus, FIR was lodged with a allegation that the balance amount of Rs.85,000/-(Rupees eighty-five thousand) was not paid by the applicant to the informant while purchasing the vehicle in question and a deed of sale was also executed between the parties on 27.12.2022 at Guwahati, which is annex at Annexure-3 of the petition.

The learned counsel for the applicant also submitted that a order dated 14.10.2022, passed by the learned Sub-Divisional Judicial Magistrate, Hatsingimari had allowed the zimma of the vehicle. He also submits that the entire facts and circumstances of the case as well as the dispute is civil in nature.

Further, it is intimated by the learned Public Prosecutor, Mr. P. Borthakur, that the IO has not submitted the up-to-date case diary as per the order dated 05.12.2022. Accordingly, it is also submitted that the statement of the present accused/applicant is not available in the case diary.

In this context, Mr. S. Nawaz, learned counsel for the applicant has submitted that after obtaining the interim pre-arrest bail on 07.11.2022, he appeared before the IO and accordingly recorded his statement under Section 161 Cr.P.C., but in the case diary his statement is not available.

In this regard, Mr. P. Borthakur, learned Public Prosecutor has submitted that the original owner, namely Sri Sanjay Mishra, who had registered the vehicle in Assam with a registration No.AS-01-Z-0078 and accordingly, sold the vehicle to the informant. But it is also seen that the applicant had registered the said vehicle under his own name from Meghalaya with the concerned authority vide Registration No.ML-07-B-9887, and accordingly, the investigation of the same is in process.

However, it is submitted by the learned counsel for the applicant that there is no allegation from the original owner, namely Sri. Sanjay Mishra and the

FIR have been lodged only on the ground of non-payment of balance amount. Accordingly, it is also submitted that further custodial interrogation is not at all necessary here in this case rather entire dispute is already been settled between the parties.

Further, the applicant prays for making the interim bail as absolute submitted that there is no chance of absconding or hampering or tempering of this case, if the same is made absolute.

After hearing the submissions of learned counsels for both sides and also considering the materials available in the Case Diary, as well as considering the fact that the accused/applicant has appeared before the IO and co-operated with the investigation of this case, I find it appropriate to extend the privilege of pre-arrest bail to the applicant, namely Abdul Khalek. Thus, the order passed by this Court dated 07.11.2022, in connection with Mankachar P.S. Case No. 227/2022, under Section 120B/406/420/34 of the Indian Penal Code is hereby made absolute with the following conditions:-

- (i) The applicant is hereby directed to appear before the IO, as the statement is not available in the case diary. Accordingly, the IO is asked to record the statement of the applicant in the up-to-date case diary.

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

The Case Diary be sent back.

JUDGE

Comparing Assistant