

GAHC010226872023



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

Case No. : Bail Appln./3601/2023

RABI LACHAN ROY
S/O LALIT ROY
VILL- SAMTHAIBARI
P.S. SARFANGURI
DIST. KOKRAJHAR, ASSAM
PIN-783346

VERSUS

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

Advocate for the Petitioner : J U AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 31-10-2023

Heard Mr. J. U. Ahmed, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Addl. P.P. for the State respondent.

This application, under Section 439 Cr.P.C. is preferred by petitioner, Sri Rabi Lachan Roy, who has been languishing in jail since 13.06.2023, in connection with Fakiragram P.S. Case No. 43/2023, U/S 384/506 IPC R/W Sec 66(F) of IT Act, 2008, RW Section 10/13/16/17 of UA(P) Act, for grant of

bail.

It is submitted that the petitioner is in jail for more than 138 days and the statutory period is already over. Learned Addl. P.P. submitted that when extension was sought by the prosecution, whether the accused was produced before the Court on the day when the extension order was sought had to be ascertained but it could not be ascertained by the prosecution as the report, called for by the prosecution, has not been sent.

Learned counsel for the petitioner relied on the decision of this court in Crl. Rev. P./436/2023 dated 18.10.2023 wherein, it was observed and held in para 13 and 14 as follows:

“ Now, adverting to the facts herein this case I find that the learned Special Judge, Kokrajhar while extending the period of detention has never procured a report from the learned Addl. P.P. to show his application of mind. What the learned Public Prosecutor did was he just forwarded the prayer of the I.O. Further, it appears from the record of the learned Court below that it has not issued any notice to the petitioners/ accused nor they were produced before the Court and no opportunity was afforded to them to raise any objection. Thus, I find sufficient force in the submission of Mr. Hazarika, the learned counsel for the petitioners, and the case law, Hitendra Vishnu Thakur (supra) referred by him also strengthened his submission.

In view of the above, this court is of the considered opinion that the impugned order, so passed by the learned Special Judge, Kokrajhar in connection with Fakiragram P.S. Case No. 43/2023, fails to withstand the legal scrutiny and, therefore, this Court is inclined to set aside the same.”

It is submitted that this order was passed by a Coordinate Bench of this Court, when the co-accused was not produced before the jurisdictional court and the impugned order dated 18.8.2023 was passed by the jurisdictional court in connection with Fakiragram P.S. Case No. 43/2023. The present petitioner is also in custody in connection with Fakiragram P.S. Case No. 43/2023.

I have considered the submissions at the bar. I have also considered the length of detention of the petitioner and also in the light of the order passed on 18.10.2023, in connection with Crl. Rev.P.No. 436/2023, the present petitioner is enlarged on bail of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of learned Special Judge, Kokrajhar under the condition that (1) the petitioner will refrain from such activities with which he has been alleged, (2) the petitioner shall not exercise threats to the witnesses and (3) the petitioner shall cooperate with the investigation as well as trial, and (4) the petitioner will appear before the I.O. after every fortnight.

On break of bail conditions, bail order shall stand cancelled.

JUDGE

Comparing Assistant