

GAHC010239522022



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

Case No. : AB/3471/2022

SUNA MIA LASKAR @ SUNA MIA
S/O LT. ABDUR RAHMAN LASKAR,
VILL.- VICHINGCHA,
P.S.- HAILAKANDI,
DIST.- HAILAKANDI, ASSAM.

VERSUS

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

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

05.01.2023

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the

petitioner viz. Suna Mia Laskar @ Suna Mia has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Karimganj Police Station Case no. 194/2012 [corresponding G.R. Case no. 508/2012] registered for offences punishable under Sections 302/201/34, Indian Penal Code [IPC]. After completion of investigation in connection with Karimganj Police Station Case no. 194/2012, the Investigating Officer [I.O.] of the case had submitted a charge-sheet under Section 173[2], CrPC, vide Charge Sheet no. 334 dated 24.12.2014.

3. From the order-sheet of G.R. Case no. 508/2012, it is noticed that after submission of the charge sheet wherein the Investigating Officer [I.O.] of the case had shown the petitioner as absconding, the learned Court of Judicial Magistrate, 1st Class [I], Karimganj issued summons to the charge-sheeted accused persons initially. The same was followed by Bailable Warrant of Arrest and Non Bailable Warrant of Arrest [NBWA] on the subsequent dates. After issuance of NBWA, the learned Court on 21.06.2017, had observed that despite issuance of NBWAs, the appearance of the petitioner could not be procured. On 19.12.2017, the learned Court had observed that the warrants issued against three charge-sheeted accused persons including the present petitioner herein, had returned with the report that they were found absent. Upon perusal of the case records, the learned Court had observed that the warrant of arrest issued against the same accused persons had returned earlier with similar reports. Having observed so, the learned Court found the case to be a fit one to issue proclamation against the accused persons including the petitioner herein. On 15.03.2018, the learned Court had observed the proclamation issued in respect of the three charge-sheeted accused persons including the petitioner had returned with report that the accused persons were found absent on repeated attempts to arrest. The proclamation was found to be served by hanging one copy of the proclamation at a conspicuous place of the village where the accused persons resided and one copy of the proclamation was hanged in the notice board of the concerned village.

4. It is settled position of law that when a person against whom a warrant has been issued and he is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82, CrPC, such person is not entitled to

the relief of anticipatory bail under Section 438, CrPC.

5. In view of the above position, the instant pre-arrest bail application filed under Section 438, CrPC is not maintainable in law and consequently, the same is dismissed.

JUDGE

Comparing Assistant