

GAHC010241102023



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

Case No. : Bail Appln./3892/2023

AINAL HAQUE
S/O LATE MAHIR UDDIN
VILL- KHOLABANDHA
P.S. KACHUMARA
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MRS M BARMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 21.11.2023

Heard Mr. M. Islam, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Ainal Haque* who has been detained behind the bar since 12.08.2023 (since last 102 days) in connection

with PRC Case No. 2565/2023 arising out of Sorbhog P.S. Case No. 43/2023.

Learned counsel for the petitioner has submitted that though the Sorbhog P.S. Case No. 43/2023 was registered on filing of the FIR lodged by one Birkang Brahma on 19.03.2023 under Section 302 of the Indian Penal Code. However, after completion of the investigation, charge-sheet was laid against the present petitioner and two other co-accused under Sections 120B/379/304 of the Indian Penal Code showing the accused Achiruddin as an absconder.

It is further submitted by the learned counsel for the petitioner that though the petitioner has been detained behind the bar since 12.08.2023 and the case has been pending before the learned Committal Court since last 22.09.2023, the case could not be committed to the Court of Sessions due to absence of one of the co-accused, namely, Achiruddin who has been shown as an absconder in the charge-sheet.

Learned counsel for the petitioner has submitted that the petitioner is a permanent resident of village Kholabandha under Kachumara Police Station under the jurisdiction of Committal Court where the PRC Case No. 2565/2023 is pending and he is ready to cooperate in the trial.

Learned Additional Public Prosecutor, on the other hand, has opposed the grant of bail to the present petitioner on the ground that the case is yet to be committed to the Trial Court and trial is to be commenced and one of the co-accused is yet to appear before the learned Committal Court.

I have considered the submissions made by learned counsel for both sides and perused the scanned copy of the case record of PRC Case No. 2565/2023.

It appears that the petitioner has been detained behind the bar since last 102 days. It also appears that the case pending before the learned Committal

Court has not been progressed due to non-appearance of the co-accused who has been shown as an absconder in the charge-sheet, this Court finds no justification in continuing the detention of the present petitioner only for the default of the co-accused who has been shown as an absconder in the charge-sheet, if he otherwise cooperates in the trial.

In view of the above, the petitioner is hereby allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand) with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Barpeta with a condition that he shall appear before the learned Committal Court as well as learned Trial Court and as when so required by the said Courts and he shall not directly or indirectly make any inducement, threat or promise to the listed witnesses in the charge-sheet and any other persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts before the learned Trial Court.

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

JUDGE

Comparing Assistant