

GAHC010245862023



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

Case No. : Bail Appln./3948/2023

PARBES HOSSAIN
S/O MD JAMAL MIA, R/O JATRAPUR, P.O.-SOK BRAHMANGURIA, P.S.-
JATRAPUR, DIST-SEPAHIJALA, TRIPURA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 31-10-2023

Heard Mr. M. Biswas, learned counsel for the accused. Also heard Mr. B.B. Gogoi, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, 1973 is preferred by accused, namely, Parbes Hossain, who has been languishing in jail hazot since 30.07.2023, in connection with the Special Task

Force (STF) P.S. Case No.01/2023, under Section 120(B)/121(A)/ 153A(1) (b)/420/468/471 of the Indian Penal Code, 1860, read with Section 12(1) (a)/12(1A)(a)(b)/12(2) of the Passport Act, 1967, for granting bail.

3. Mr. M. Biswas, learned counsel for the accused submits that the accused was arrested on 30.07.2023, and since then he has been languishing in jail *hazot* and that the mandatory period of detention is over on 27.10.2023 and the investigating agency is yet to file charge sheet against the accused and as such he is entitled to default bail.

4 On the other hand B.B. Gogoi, learned Addl. Public Prosecutor, Assam appearing for the State respondent has opposed the petition on the ground that the offences are serious in nature and investigation is still going on.

5. Having heard the submissions of learned Advocates of both sides and considering that the mandatory period of 90 days is over on 27.10.2023 and the investigating officer has failed to submit the charge sheet against the accused/ petitioner with the mandatory period of 90 days, under Section 167(2)(a)(i) of the Cr.P.C., the accused/ petitioner is entitled to default bail.

6. It is settled position of law that Section 167(2) of the Cr.P.C. is a limb of Article 21 of the Constitution of India and as such, the investigating authority is under a constitutional duty to expedite the process of investigation within the stipulated time, failing which, the accused/ petitioner is entitled to be released on default bail.

7. Mr. B.B. Gogoi, learned Addl. Public Prosecutor, Assam has fairly submitted that no charge sheet has been filed as on date against the accused/petitioner.

8. Accordingly, it is provided that the accused/ petitioner, namely, Parbes Hossain be released on bail forthwith on furnishing a bond of Rs. 30,000/- (Rupees thirty thousand) only with one surety of like amount, to the satisfaction of learned Chief Judicial Magistrate, Kamrup (M) at Guwahati, on the following conditions that:-

- (i) He shall not leave the jurisdiction of learned Chief Judicial Magistrate, Kamrup (M) at Guwahati without prior permission;
- (ii) He shall surrender his Passport, if any, before the I.O. within a week from today;
- (iii) He shall appear before the I.O., as and when directed, and
- (iv) He shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court or to any police officer.

9. In terms of above this B.A. stands disposed of.

JUDGE

Comparing Assistant