

GAHC010247952023



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

Case No. : AB/3707/2023

DURGA BORAH
S/O- MANIRAM BORAH,
R/O- VILL- BORBAM DIHINGIA,
P.O- DEURI BORBAM,
O.S- GOGAMUKH,
DIST- DHEMAJI, ASSAM,
PIN-787026

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S C DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 20.12.2023

1. Heard Mr. S. C. Das, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor for the State respondent.

2. This application has been preferred under Section 438 of Code of Criminal Procedure, 1973, by the petitioner, namely, Durga Borah who is apprehending his arrest in connection with Gogamukh P. S. Case No. 102/2023 registered under Sections 387 of the Indian Penal Code.

3. The gist of the accusation against the petitioner in this case is that on 05.10.2023, one Shri Lochan Konch had lodged an FIR before the In-Charge of Bordoloni Police Outpost under Gogamukh Police Station, *inter-alia*, alleging that the accused persons named in the FIR including the present petitioner have been demanding illegal money from the owners/drivers of the truck dumpers and it is alleged in the FIR that on 05.10.2023 the dumper owners had caught one Papu Deka red handed while he was demanding money and at that time four other persons including the present petitioner had fled away from the spot.

4. Learned counsel for the petitioner has submitted that the allegations levelled against the present petitioner are not true. It is further submitted that the present petitioner is the Joint Secretary of Krishak Mukti Sangram Samiti, Dhemaji District Branch and on 06.10.2023, they had lodged an FIR before the Officer-in-Charge of Gogamukh Police Station against the truck owners association regarding illegal excavation of sand and gravel in spite of the prohibitory orders of the government as well as assaulting of one of the co-accused, namely Papu Deka by the members of truck owners association.

5. Learned counsel for the petitioner has also submitted that in the meanwhile one Bharat Chutia, Chentu Gogoi and Pallab Saikia, who are also named as co-accused in the FIR have already been allowed to go on bail.

6. It is further submitted by the learned counsel for the petitioner that the petitioner shall cooperate in the investigation, however, as police is

searching him, he is apprehending his arrest in connection with this case.

7. On the other hand, learned Public Prosecutor has submitted that on the basis of the FIR lodged by the president of Krishak Mukti Sangram Samiti, Dhemaji District Branch the charge sheet has been laid. It is further submitted that in the instant case, the petitioner instead of complaining to the Forest Officials regarding the illegal excavation of gravel and sand by the truck owner association have indulged in extorting money from the truck drivers.

8. Learned Additional Public Prosecutor thereafter, opposes the grant of bail to the present petitioner.

9. I have considered the submissions made by learned counsel for both the parties and have perused the case diary of Gogamukh P. S. Case No. 102/2023.

10. It appears that three of the accused persons named in the FIR along with the present petitioner have already been granted bail by the Court of learned Chief Judicial Magistrate, Dhemaji. It also appears that in the FIR, one Papu Deka was caught red handed who it is stated to have released by the police when he went the police station on the date of incident.

11. Considering these facts, this Court is of the considered opinion that if the present petitioner cooperates in the investigation, his custodial detention may not be necessary for fair completion of the investigation of Gogamukh P. S. Case No. 102/2023

12. In view of the above, the petitioner, namely, Durga Borah is hereby directed to appear before the Investigating Officer of Gogamukh P. S. Case No. 102/2023 within a period of 10 days from the date of this order and cooperate with the Investigating Officer in fair completion of investigation. If he does so within the said period, in the event of his arrest in connection with

Gogamukh P. S. Case No. 102/2023, he shall be allowed to go on interim anticipatory bail of Rs. 30,000/- (Rupees Thirty Thousand only), with one surety of like amount to the satisfaction of the arresting authority subject to the following conditions:

i. That the petitioner shall cooperate in the investigation.

ii. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts of the case before the Investigating Officer.

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

14. Send back the case diary.

JUDGE

Comparing Assistant