

GAHC010250592023



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

Case No. : Bail Appln./4083/2023

NOBIR HUSSAIN @ NABIR HUSSAIN
S/O- DUKIT ALI, R/O- OUDHUBI PART-II, P.S. JOGIGHOPA, DISTRICT-
BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P., ASSAM

Advocate for the Petitioner : MR. R ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

29.11.2023

Heard Mr. R. Islam, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Nobir Hussain@ Nabir Hussain,

who has been detained behind the bars since 12.07.2023 (for last 140 days) in connection with Sessions Case No. 53(J)/2023 corresponding to Jogighopa P.S. Case No. 189/2023 pending before the Court of learned Additional District and Sessions Judge (F.T.C.) North Salmara, Abhayapuri.

The brief of this case is that on the basis of an FIR which was filed by one Sahera Khatun on 02.07.2023 before the Officer-In-Charge of Jogighopa Police Station, *inter-alia*, alleging that one Sahanur Islam had called her husband on 30.06.2023 and thereafter, he went missing and his mobile phone was also found switched off and later on, the dead body of the husband of the first informant was found from Borghola (Abhayapuri). On receipt of the said FIR, Jogighopa P.S. Case No. 189/2023 was registered and an investigation was initiated. On completion of the investigation, charge-sheet was laid against 4(four) numbers of accused persons including the present petitioner. During the pendency of the investigation, the present petitioner was arrested on 12.07.2023 and he has been detained behind the bars since then.

Learned counsel for the petitioner has submitted that the case of the petitioner has been committed to the Court of learned Additional District and Sessions Judge (F.T.C.) North Salmara, Abhayapuri and it is fixed at the stage of furnishing of copies.

It is also submitted by the learned counsel for the petitioner that in the meanwhile one of the co-accused, namely, Sahanur Islam, who has been named in the FIR has been granted bail by learned Judicial Magistrate First Class, North Salmara, Abhayapuri, on completion of the statutory period of detention.

Learned counsel for the petitioner has submitted that when one of the co-accused has already been released on bail, no justification is there to keep the present petitioner behind the bars when he is ready to face trial.

On the other hand, learned Additional Public Prosecutor has opposed the grant of bail to the present petitioner at this stage on the ground that there is a probability of the petitioner threatening the witnesses if he is released on bail at this stage as most of the witnesses hail from the same village from where the present petitioner belongs and there are sufficient incriminating materials against the present petitioner in this case and to show that he along with other co-accused have caused the death of the son of the first informant.

I have considered the submissions made by the learned counsel for both the parties and have perused the materials available on record including the scanned copy of the case record which was called for in connection with this case.

It appears that 4(four) accused persons who have been charge-sheeted in this case, one of the co-accused namely, Sahanur Islam, who was named in the FIR has already been granted bail.

This Court, hence keeping the present petitioner behind the bars when one of the co-accused has already been enlarged on bail does not appear to be justified if otherwise the petitioner co-operates in his trial.

As regards the submission of learned Additional Public Prosecutor that there is a probability of the present petitioner of threatening the witnesses, as there is no material on record to show at this stage that he has ever threatened any of the witnesses, this concern may be addressed by imposing sufficient conditions on the petitioner while granting him bail so that he may not threaten any of the witnesses during the pendency of the trial.

In view of the above, the petitioner, namely, Nobir Hussain@ Nabir Hussain, is hereby allowed to go on bail of Rs. 50,000/- with two suitable sureties of like amount to the satisfaction of the learned Additional District and

Sessions Judge (F.T.C.), North Salmara, Abhayapuri with conditions that:-

(i) The petitioner shall appear before the Officer-In-Charge of Jogighopa P.S. Case No. 189/2023 every 15(fifteen) days during the pendency of the trial or till learned Trial Court deems it fit to continue the appearance of the petitioner before the Officer-In-Charge of Jogighopa Police Station who shall maintain an attendance register to record the attendance of the petitioner whenever he appears before the Officer-In-Charge of Jogighopa P.S.

(ii) The petitioner shall not directly or indirectly make any inducement threat or promise to any of the listed witnesses or to any other persons who may be acquainted with the facts of the case so as to dissuade such witness/person to depose against the petitioner to the pending trial against the present petitioner in Sessions Case No. 53(J)/2023; and

(iii) Learned Trial Court may impose any additional condition of bail if he deems fit to do so.

Any violation of the above condition may be good grounds for cancellation of bail by the learned Trial Court without again approaching this Court.

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

JUDGE

Comparing Assistant