

GAHC010254822023



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

Case No. : Bail Appln./4134/2023

MUCHA ALI
S/O LUTFUR RAHMAN
R/O VILL- GORAJAN
PUB FUTALJAR
P.O. PUB FUTALJAR
P.S. RUPAHIHAT
DIST. NAGAON, ASSAM
PIN-782128

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H BARUAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 24.11.2023

Heard Mr. H. Baruah, learned counsel for the petitioner. Also heard Mr. B. Sarma, 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, Md. Mucha Ali, who has been detained behind the bar since 22.09.2023 (last 62 days) in connection with Raha P. S. Case No. 139/2023 under section 379/279/302/34 of the IPC.

The gist of accusation against the present petitioner in this case is that one Sashindra Nath on 22.06.2023 lodged an FIR before the officer-in-charge of Raha Police Station, *inter-alia*, alleging that on 21.06.2023 at around 11.30 PM, a gang of three had committed theft of cows from the house of one Bhuban Ch. Nath and when the villagers came to apprehend the cattle thieves, they made an attempt to flee away in a vehicle and in the process they hit the father of the petitioner and as a result of which he sustained injuries and died on the spot. Later on, the father and the mother of the informant died on the spot.

Thereafter, the thieves were apprehended by the public who also had sustained injuries.

Learned counsel for the petitioner submits that the petitioner has been detained behind the bar since last 62 days and other three of the co-accused were already granted bail by a co-ordinate bench of this Court.

It is submitted by learned counsel for the petitioner that considering the period of detention of the present accused petitioner he may be allowed to go on bail also on the ground of parity as the other accused are already released on bail.

On the other hand, learned counsel for the petitioner opposed the grant of bail to the present petitioner on the ground that in the instant case, the parent of the informant expired and one of the accused also died and there are

materials on record to indicate that the present petitioner was involved in the alleged theft of cows.

Learned counsel for the petitioner has also opposed the grant of the bail on the ground that the some of the co-accused are yet to be arrested.

I have considered the submission made by the learned counsel for both the sides and have perused the materials available on record including the case diary of Raha P. S. Case No. 139/2023.

It appears that the petitioner has been detained behind the bar since last 62 days and his statement under section 161 of the Code of criminal Procedure, 1973 has also been recorded. It also appears that the statement of other witnesses under section 161 of the Code of criminal Procedure, 1973 has also been recorded

Further, it also appears that three of the co-accused were also enlarged on bail by a co-ordinate bench of this court, hence, merely because of fact that some of the co-accused are yet to be arrested same may not be a just ground for retaining the present petitioner any further if otherwise his custodial detention is necessary.

Considering the progress made in the investigation and considering the fact that the three of the co-accused persons are already granted bail, this Court is of the considered opinion that if the present petitioner co-operates with the Investigating Officer, his further custodial detention does not appear to be necessary for fair completion of the investigation of Raha P. S. Case No. 139/2023.

Hence, the petitioner, namely, Md. Mucha Ali is allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount subject to the satisfaction of the learned Chief Judicial Magistrate, Nagaon with the

following conditions:

- i. 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.
- ii. That the petitioner shall co-operate in the investigation.

With the above observation, this bail application is accordingly disposed of.
Send back the case diary.

JUDGE

Comparing Assistant