

GAHC010260192023



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

Case No. : Bail Appln./4226/2023

MD. AJIJUR RAHMAN @ AJI@ AJIMUDDIN
S/O LATE MUSSA MIYA
R/O VILL- NO. 1 AHMEDPUR
P.O. ISLAM GOAN, P.S. BIHPURIA
DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:THE CENTRAL BUREAU OF INVESTIGATION
REP. BY THE SPECIAL PP
CB

Advocate for the Petitioner : F K R AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 22.11.2023

- 1.** Heard Mr. F. K. R. Ahmed, learned counsel for the petitioner. Also heard Mr. M. Haloi, learned Special Public Prosecutor for CBI.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Md. Ajijur Rahman @ Aji @ Ajimuddin* who has been detained behind the bar since 29.05.2023 (since last 177 days) in connection with PRC Case No. 1626/2023 corresponding to RC No.

0502023S0003 arising out of North Lakhimpur P.S. Case No. 183/2023 under Sections 120(B)/395/397/342/387 of the Indian Penal Code pending in the Court of learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur.

3. The gist of accusation in this case is that on 12.5.2023 one Mustt. Amina Khatun had lodged an FIR before the Officer-in-Charge of Lakhimpur Police Station, *inter alia*, alleging that on 06.05.2023, at around 2:00 a.m. at night, some miscreants with the assistance of accused No. 1 named in the FIR, namely, Junmoni Rabha (since deceased) had enter into the resident of the informant and subjected the son of the informant, namely, Md. Ajgor Ali to physical torture and forcibly took away Rs.80,000/- along with the purse, voter ID card, PAN card and golden rings from the wife of Md Ajgor Ali. It is also alleged in the FIR that the informant was also physically assaulted and the house of the informant was rampaged and thereafter the accused persons named in the FIR (*total 8 nos. of accused persons are named in the FIR*) took away the Maruti Brezza of elder son of the informant and instructed the informant to go Arunachal bypass situated at Gohpur in the next morning along with Rs. 6,00,000/- (Rupees Six Lakhs). It is alleged in the FIR that thereafter the informant arranged Rs. 6,00,000/- (Rupees Six Lakhs) by mortgaging her own vehicle and handed over to the same to the accused persons and only after payment of the said amount, the son of the informant was released. It has been further alleged in the FIR that out of the total amount of Rs. 6,00,000/- (Rupees Six Lakhs), the petitioner was paid Rs.90,000/- through UPI payment mode and remaining amount was paid in cash to the accused No. 1, namely, Junmoni Rabha.

4. After lodging of the said FIR, North Lakhimpur P.S. Case No. 183/2023 was registered and the present petitioner was arrested in connection with the

said case on 26.05.2023. Initially, the case was investigated by the CID, Assam, subsequently, the investigation of the said case was transferred to CBI and accordingly RC No. 0502023S0003 dated 14.06.2023 was registered and the investigation was taken up by the CBI. Thereafter, on 19.08.2023, the Investigating Officer laid the charge-sheet before the Chief Judicial Magistrate, North Lakhimpur bearing charge-sheet No. 9/2023 under Sections 120B/342/388/395 of the Indian Penal Code against four nos. of accused persons including the present petitioner. The other accused persons against whom the charge-sheet was laid were Nur Mohammad @ Kalia @ Roy, *Riyajul Islam* and Mozibur Rahman.

5. It is submitted by learned counsel for the petitioner that though the charge-sheet was laid on 19.08.2023 by the Investigating Officer of CBI, however, in clause No.16.16 of the charge-sheet, it was mentioned that further investigation in the case has been kept open to unearth larger conspiracy and role of co accused persons namely, (i) Mustak Ahmed, (ii) Muktar Hussain, (iii) Najrul Islam and (iv) Dildar Hussain and others, if any. It is further submitted by learned counsel for the petitioner that the learned Chief Judicial Magistrate, North Lakhimpur on receipt of the aforesaid charge-sheet took cognizance of offence under Sections 120B/342/388/395 of the Indian Penal Code against the four accused persons named in the charge-sheet.

6. Learned counsel for the petitioner has submitted that the present petitioner had only help the Police, he acted as a Police informer. It is also submitted that the allegation against the present petitioner is that he was in the team led by SI, Junmoni Rabha and Rs.20,000/- was paid to him by of the co-accused, namely, Riyajul Islam through the bank account of one Tahir Ali.

7. Learned counsel for the petitioner has further submitted that on

12.09.2023 when the case was taken up for consideration by the Court of learned Chief Judicial Magistrate, North Lakhimpur, the Investigating Officer of the case had filed a written prayer before the Court for allowing the Investigating Officer to continue the further investigation in the case to unearth the larger conspiracy and to investigate the role of other co-accused persons, if any and the Court of learned Chief Judicial Magistrate, North Lakhimpur allowed the said prayer and granted time till 03.10.2023 to the Investigating Officer to submit the final form in the case. On 03.10.2023, the Investigating Officer submitted a written prayer before the Court of learned Chief Judicial Magistrate, North Lakhimpur to continue the further investigation and the said prayer was allowed and time was granted till 03.11.2023 for submission of final form. It is further submitted by learned counsel for the petitioner that thereafter again on 03.11.2023, a similar prayer has been made by the Investigating Officer and a similar order was passed by the learned Chief Judicial Magistrate, North Lakhimpur granting further time to complete further investigation and to submit final form and the next date for submission of final form has been fixed on 12.12.2023.

8. Learned counsel for the petitioner has submitted that the petitioner has been detained behind the bar since 177 days and his case is yet to be committed and there are about 74 listed witnesses in the charge-sheet and there is every likelihood that completion of the trial would take a considerable period of time and as the petitioner is a permanent resident of Lakhimpur district within the jurisdiction of the learned Committal Court/Trial Court and he is ready to face the trial, there is no justification in keeping him behind the bar during the pendency of the trial.

9. I have considered the submissions made by learned counsel for the

petitioner as well as gone through the materials available on record including the case diary of North Lakhimpur P.S. Case No. 183/2023.

10. It appears from record that even after submission of the charge-sheet under Section 173(2) of the Code of Criminal Procedure, 1973, even though the charge sheeted accused persons, including the present petitioner, were present before the committal court, learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur has not committed the case yet and has extended the date for completion of the further investigation and has fixed the case on 12.12.23 for submission of final form. The approach of learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, does not appear to be correct as once final form has been submitted, any additional report, if submitted, would only be supplementary report under Section 173(8) of the Code of Criminal Procedure, 1973. Though, the present petitioner is not entitled to get default bail as the charge-sheet was laid well within the time stipulated under Section 167(2) of the Code of Criminal Procedure, 1973. However, as the petitioner has been detained behind the bar since last 177 days, unless there is some justification for his continued detention, he would be entitled to get regular bail.

11. Learned Special Public Prosecutor has opposed the grant of regular bail to the present petitioner on the ground that further investigation is going on and release of the present petitioner on bail at this stage would hamper further investigation. Though, the Investigating Agency has power to conduct further investigation under Section 173(8) of the Code of Criminal Procedure, 1973, however, in the considered opinion of this Court, same does not appear to be a just ground, under the facts and circumstances of the present case for denying the bail to the present petitioner as the evidence against the present petitioner has already been collected and charge-sheet under Section 173(2) of the Code

of Criminal Procedure, 1973 has already been laid against him. As there are large number of witnesses (74 nos.) listed as prosecution witnesses in the charge-sheet, the completion of trial would likely to take considerable period of time and there is no justification in keeping the petitioner behind the bar during this period, if he otherwise cooperates in his trial.

12. For the aforesaid reasons, the petitioner, namely, *Md. Ajijur Rahman @ Aji @ Ajimuddin* is allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand only) with one surety of like amount to the satisfaction of learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, subject to following conditions:-

I. That the petitioner shall appear before learned Committal Court/Trial Court as and when so required by the said Court;

II. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of this case so as to dissuade such person from disclosing such facts to the Court or to the any Police Officer;

III. The petitioner shall cooperate in any further investigation which may be pending in connection with North Lakhimpur P.S. Case No. 183/2023 (RC No. 0502023S0003) while he is on bail;

IV. Learned Trial Court may impose any additional condition of bail if it deems fit to do so, at any time, while the petitioner is enlarged on bail.

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

JUDGE

Comparing Assistant