

GAHC010262752023



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

Case No. : AB/3966/2023

TUJAMMIL HOQUE
S/O TAIJUDDIN AHMED
R/OGOROIMARI BILORJAN
P.O. MAHTOLI, P.S. BOKO
DIST. KAMRUP, ASSAM
PIN CODE- 781136
PRESENTLY RESIDING AT
PANIKHETI, P.S. BOKO
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR N AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

23.11.2023

Heard Mr. B. Chowdhury, learned counsel for the petitioner. Also heard Ms. S. Jahan, learned Additional Public Prosecutor, Assam.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Tujammil Hoque, who is apprehending his detention in connection with PRC Case No. 2306/2023 which is pending before the Court of learned Additional Chief Judicial Magistrate, Barpeta.

It is submitted by learned counsel for the petitioner that on the basis of an FIR which was lodged by one Safiqul Islam on 29.03.2023, before the Officer-In-Charge of Kachumara Police Station, *inter-alia*, alleging that 31 numbers of accused persons named in the FIR trespassed into the land of Hanif Ali and assaulted Hanif Ali and others.

It is also alleged in the FIR that at that time the first informant, along with his brother Azizul Haque were cultivating in their own land and at that time, the accused persons named in the FIR assaulted them.

It is specifically alleged in the FIR that accused Hanif Ali assaulted Azizul Haque with a sharp weapon and as a result of which Azizul sustained grievous injuries on his person and later on succumbed to his injuries.

It is further submitted by learned counsel for the petitioner that thereafter an investigation started and after completion of the investigation, charge-sheet was laid against 11(eleven) accused persons including the present petitioner. However, the present petitioner along with two other persons namely, Anowar Hussain and Ashraful Hussain were shown as absconder in the charge-sheet.

It is further submitted by the learned counsel for the petitioner that after laying of the charge-sheet, the learned Committal Court, that is the Court of learned Additional Chief Judicial Magistrate, Barpeta, by order dated, 17.08.2023 had issued summons to the accused persons named in the charge-sheet including the present petitioner.

It is submitted by learned counsel for the petitioner that though the learned Committal Court has issued summons to the present petitioner, as Section 302 is also one of the offence under which charge-sheet has been laid and as the maximum punishment for the said offence is death penalty, the Committal Court being the Court of learned Additional Chief Judicial Magistrate, Barpeta, may not grant bail to the present petitioner even if he appears before the said Court in pursuant to the summons received by him because of the embargo has provided under Section 437 (1) (i) of the Code of Criminal Procedure, 1973 and if he is not allowed to go on bail then as per Section 209(a) of the Code of Criminal Procedure, 1973, the petitioner would be remanded to custody. Hence, his apprehension of being detained is there even if he appears before Committal Court in pursuant to the summons issued to him.

On the other hand, learned Additional Public Prosecutor, Assam submits that though the case has been charge-sheeted against the present petitioner, however, from the materials available on record, it appears that the allegation of assault on the deceased by sharp weapon is against another co-accused namely, Hanif Ali, Billal Hussain and the allegations of involvement of the present petitioner as to whether he shared the common object and whether the offence under Section 149 of the Indian Penal Code is made out against him and would be required to be looked into during the trial and the apprehension shown by the present petitioner that as one of the offence involved in this case is under Section 302 for which the maximum punishment is death penalty, hence, due to embargo of Section 437 (1) (i) of the Code of Criminal Procedure, 1973, the Magistrate Court may not grant bail to the petitioner even if he appears in pursuant to the summons issued by the said Court.

In view of the submissions made by learned counsel for the petitioner as

well as learned Additional Public Prosecutor, the apprehension of being detained even if the petitioner appears in pursuant to the summons issued by learned Committal Court appears to be genuine.

Hence, the petitioner is hereby directed to appear before the learned Committal Court, that is, the Court of learned Additional Chief Judicial Magistrate, Barpeta, on 04.12.2023 and if he appears before the said Court on the said date, learned Additional Chief Judicial Magistrate, Barpeta shall allow him to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the said Court, subject to the conditions that:-

(i) the petitioner shall appear before the learned Committal Court/Trial Court as and when so required by the said Court ; and

(ii) learned Committal Court/Trial Court may impose any additional condition of bail if such Court deems it fit to do so.

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

JUDGE

Comparing Assistant