

GAHC010266592023



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

Case No. : Bail Appln./4313/2023

MOZIBUR ROHMAN
S/O LATE JOYNAL ABDDIN
R/O VILL- NO. 2, ISLAMPUR
P.S. BIHPURIA
DIST. LAKHIMPUR, ASSAM
PIN-787054

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 : 22.12.2023

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, Mozibur Rohman who has been detained behind the bar since 02.06.2023 (for last 202 days) in connection with PRC Case No. 1626/2023 corresponding to G. R. Case No. 469/2023 with reference to the CBI Case No. RCO50202350003 arising out of North Lakhimpur P.S. Case No. 183/2023 under Sections 120(B) read with 342/388/395 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 entered the residence 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 the elder son of the informant and instructed the informant to go to Arunachal bypass situated at Gohpur in the next morning along with Rs. 6,00,000/- (Rupees Six Lakh). It is alleged in the FIR that thereafter the informant arranged Rs. 6,00,000/- (Rupees Six Lakh) by mortgaging her own vehicle and handed over 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 Lakh), the petitioner was paid Rs.90,000/- through UPI payment mode and the 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, but subsequently, the investigation of the said case was transferred to CBI and accordingly RC No. RCO50202350003 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. Learned counsel for the petitioner has submitted that the charge-sheet has been laid against four accused persons, namely, Nur Mohamad Ali @ Kalia, MD. Ajijur Rahman @ Aji @ Ajimuddin and the present petitioner, and it is further submitted by the learned counsel for the petitioner that in the meanwhile the other three co-accused had already been released on bail by this Court, and it is also submitted that though on the prayer of the CBI further investigation was allowed by the Court, however, the CBI has not yet filed any supplementary charge sheet and therefore, the case of the present petitioner is still pending before the Committal Court and it is not yet committed and the petitioner has been languishing behind the bars for last 202 days. On that

ground, the learned counsel for the petitioner has prayed for allowing the petitioner to go on bail.

6. On the other hand, learned Special Public Prosecutor, CBI has vehemently opposed the grant of bail to the present petitioner on the ground that the present petitioner was one of the beneficiary of the money which was extorted from the victim.

7. It is also submitted that as further investigation is going on, if the present petitioner is released on bail, there is every likelihood that he may hamper the investigation and may attempt to mean over the witnesses and therefore, he prays for not to allow the present petitioner to go on bail.

8. I have considered the submissions made by learned counsel for the petitioner as well as gone through the materials available on record.

9. It appears from record that though the charge sheet was filed against the present petitioner and three other co-accused persons on 09.08.2023, however, the case of the present petitioner has not yet been committed and the learned Chief Judicial Magistrate, Lakhimpur has extended the date for completion of the further investigation time and again.

10. Since the petitioner has been detained behind the bars for last 202 days and as the other three of the co-accused against whom charge sheet has been laid are already released on bail, unless there is some justification for his continued detention, he would be entitled to get bail like the of other co-accused persons.

11. The objection raised by the learned Special Public Prosecutor, CBI under the facts and circumstances of this case, does not appear to be good enough to allow continued detention of the present petitioner in view of the fact that the other three co-accused are already released on bail. More so, as there are large

number of listed witnesses in the charge sheet i.e., 74 numbers, the completion of trial would likely to take considerable period of time and the case is yet to be committed, hence this Court does not find any justification in keeping the petitioner behind the bars during this period, if he otherwise cooperates in his trial.

12. For the aforesaid reasons, the petitioner, namely, Mozibur Rohman 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 that:-

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

ii. he 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/Investigating Officer;

iii. he petitioner shall cooperate in any further investigation which may be pending in connection with North Lakhimpur P.S. Case No. 183/2023 (RC No. 050202350003) 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