

GAHC010267532022



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

Case No. : AB/3807/2022

NURUL ISLAM
S/O- LATE SAIFUDDIN AHMED,
R/O- VILL BILLESWAR,
P.O- BELSOR, DIST- NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MS RIMPI DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 17.02.2023

Heard Mr. S. Munir, learned counsel for the petitioner. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent and Mr. P. P.

Dutta, learned counsel, who has assisted the learned Additional Public Prosecutor and appeared on behalf of the informant.

This is an application under Section 438 of the Code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with Gorchuk P.S. Case No. 369/2022, under Sections 420/406/468 of the Indian Penal Code.

The Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioner that after obtaining the interim order, dated 22.12.2022, the petitioner has appeared before the I.O. and his statement has also been recorded under Section 161 of the Code of Criminal Procedure. Further it is submitted that the vehicle in question was registered in his name on the death of the original owner as he is the 2nd class heirs and as the original owner died without any issue. Further it is submitted that if there is any anomalies or any illegality in transferring the name of the present petitioner, the concerned authority may make an enquiry in this regard. However, after obtaining the Next of Kin Certificate, they applied for registration of the vehicle in the name of the present petitioner and accordingly it was registered in the name of the present petitioner, for which the other legal heirs also raised no objection.

In this context, the learned Additional Public Prosecutor has submitted that from the materials available in the Case Diary, it reveals that one No Objection Certificate was given by the other legal heirs while the vehicle was

registered in the name of the present accused/petitioner. In the same time, from the documents available in the Case Diary, it is seen that the present accused/petitioner, along with 4 (four) others, are shown to be the next kin of the deceased- Sirajul Islam.

In this context, the learned counsel appearing on behalf of the informant, Mr. P. P. Dutta, has submitted that the Next Kin Certificate was obtained by them only in the name of Lt. Sirajul Islam and surprisingly during the life time of deceased- Hanufa Begum, her name was shown as the next kin, being the wife of Lt. Sirajul Islam.

In reply, the learned counsel for the petitioner has submitted that the Next Kin Certificate was obtained only after the death of Lt. Hanufa Begum, i.e. on 26.07.2022, as Hanufa Begum was died issueless. During the life time of deceased- Hanufa Begum, one Next Kin Certificate was issued. But, after her death, the present petitioner, along with 4 (four) others, obtained the Next Kin Certificate as Lt. Sirajul Islam was the elder brother of the present petitioner.

The learned counsel appearing on behalf of the informant also submitted that they not only obtained the Next Kin Certificate illegally, but also obtained the registration of the vehicle in the name of the petitioner with some false information and also obtaining a false claim of insurance policy after the death of Hanufa Begum.

But, from the materials available in the Case Diary and also considering the submissions of learned Additional Public Prosecutor, it is seen that the name

of the present informant is no way mentioned as a legal heir of the deceased- Hanufa Begum, though he claimed himself to be the grandson of the deceased- Hanufa Begum.

Further, considering the materials available in the Case Diary and conduct of the accused petitioner, it is seen that the accused/petitioner has not violated any terms and conditions of the bail and it is also seen that the I.O. has collected all the required documents in connection with this case and accordingly, I find that custodial interrogation of the accused/petitioner may not be necessary in this case. However, the presence of the present accused/petitioner may be required in the further investigation of the case.

In view of above, I find it a fit case to extend the privilege of pre-arrest to the present accused/petitioner. Accordingly, the interim pre-arrest bail order, granted by this Court vide order dated 22.12.2022, is hereby made absolute in the same terms and conditions.

The anticipatory bail application stands disposed of in terms above.

JUDGE

Comparing Assistant