

GAHC010267552022



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

Case No. : Bail Appln./3646/2022

SEKENDER ALI
S/O- ABDUR ALI,
R/O- SALBANDHA,
P.O AND P.S- BILASIPARA, DIST-DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR. P DEKA

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

03.02.2023

1. Heard Mr. P. Deka, learned counsel appearing for the petitioner as well as Mr. M.P. Goswami, learned Addl. P.P. appearing for the State respondent.
2. This application under Section 439 Cr.P.C, is preferred by the petitioner, namely, Sekender Ali, who is languishing in jail hajot since 09.11.2022, in connection with Bilasipara

P.S. Case No. 304/2022, registered under Section 120/302 IPC.

3. I have considered the submissions at the Bar.
4. It is submitted on behalf of the petitioner that the petitioner is an auto rickshaw driver and makes a livelihood by transporting passengers in his auto rickshaw. He has been languishing in jail for 86 days. The case diary has continuously been called for but the case diary is not received. The learned counsel for the petitioner has stated that the main accused against which the allegation has been made by the informant namely Atibar Rahman @ Choto has already been enlarged on bail vide order dated 01.11.2022 in connection with this case. The order of the learned SDJM(M) Bilasipara has been annexed as Annexure-3 in support of the prayer.
5. The learned Addl. P.P. has raised objections stating that without perusal of the case diary, the bail petition cannot be considered.
6. The FIR reveals that on 16.09.2022 at about 2.00 P.M. while the deceased Ainali Sheikh was sleeping, Atibar Rahman @ Choto called him over phone and asked the deceased to meet him. The deceased did not return to home till 6.00 a.m. of the morning. The informant i.e the wife of the deceased went to accused no. 1, Atibar Rahman's house to ask him about her husband. The accused no. 1 Atibar Rahman drove her out of his house. On 17.09.2022 at around 12.00 P.M., the body of the deceased was found near the Pikai river.
7. I have considered the prayer of parity. I have also considered the length of detention. The petitioner is not named in the FIR. Charge-Sheet has not been laid against the petitioner.
8. At this stage, it appears that further detention for the sake of investigation does not appear to be necessary. The petitioner is a local resident and he does not appear to be a flight risk. When the petitioner learnt about this case, he surrendered before the learned SDJM, Bilasipara and thereafter, he has forwarded to the custody. It is submitted that as the petitioner was innocent, so he surrendered before the learned SDJM, Bilasipara.
9. In view of my foregoing discussions, I deem it proper to enlarge the petitioner on bail.
10. The petitioner is to be enlarged on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of learned SDJM, Bilasipara,

under the conditions that:-

- (1) the petitioner will co-operate with the investigation and not exercise threats to the witnesses, and
- (2) the petitioner will not leave the jurisdiction of Court without prior permission till completion of the investigation.

This petition stands disposed of.

Send back the case diary.

JUDGE

Comparing Assistant