

GAHC010267822023



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

Case No. : Bail Appln./4345/2023

BABLU DAS
S/O LT. SUBASH DAS, R/O VILL-BARIHAT, P.S.-PALASHBARI, DIST-
KAMRUP (R), ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 12.12.2023

Heard Mr. G. Uddin, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State.

This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Bablu Das, who has been detained behind the bars since 01.11.2023 (for the last 42 days) in connection

with Palashbari PS case No. 355/2023 (GR No. 1270(K)/2023) under Section 507/509/501 IPC read with Section 67 of Information Technology Act, 2000.

The accusation against the present petitioner is that on 29.09.2023, the victim of this case had lodged an FIR before the Officer-In-charge of Palashbari Police Station, *inter-alia*, alleging that the petitioner using a fake ID/account on Instagram, namely, Bitupon Das had contacted the informant through her Instagram account and requested her for a photoshoot on various pretext and when the first informant refused to share her photographs the petitioner opened a fake Instagram ID/account and uploaded some objectionable photos and videos of the informant on the Instagram to harass the informant.

On receipt of the said FIR, Palashbari P.S. case No. 355/2023 under Section 507/509/501 of the Indian Penal Coderead with Section 67 of Information Technology Act, 2000 was registered.

Learned counsel for the petitioner has submitted that the petitioner has been detained behind the bars for the last 42 days and the punishment prescribed for committing first offence under Section 67 of the Information Technology Act is imprisonment which may be extended to three years only.

The learned counsel for the petitioner submits that the petitioner has been implicated in an offence for the first time and it is also reflected in the forwarding report of the Investigating Officer, where there is no mention about any previous incident any allegations were levelled against the present petitioner.

Learned counsel for the petitioner has further submitted that as per Section 77B of the Information Technology Act, 2000, the offences punishable with imprisonment for three years shall be bailable offence under Information Technology Act, 2000.

Learned counsel for the petitioner has also submitted that the other three offences namely under Section 507/509/501 of the Indian Penal Code are also bailable. Hence, it is prayed by the learned counsel for the petitioner that the petitioner may not be detained any further, as apparently offences against which the petitioner has been booked in this case are all bailable.

On the other hand, learned Additional Public Prosecutor prays for some time to produce the case diary.

On perusal of the FIR dated 06.10.2023 and forwarding report dated 01.11.2023 by the Investigating Officer it appears that the offence alleged against the present petitioner is first time offence and no mention about any previous offence is there, either in the FIR or in the forwarding report.

Therefore, this Court is of the considered opinion that the offence with which the present petitioner is booked in this case including offence under Section 67 of the IT Act, 2000 are all bailable and therefore, he cannot be detained any further.

In view of the above, the petitioner, namely, Bablu Das is allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand Only) with one surety of like amount subject to the satisfaction of the learned Chief Judicial Magistrate, Kamrup, Amingaon with the following conditions:

- i. That the petitioner shall cooperate in the investigation.
- ii. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts of the case before the Investigating Officer.

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

JUDGE

Comparing Assistant