

GAHC010268842022



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

Case No. : AB/3825/2022

DIGANTA BORDOLOI
S/O LT. GUPAN BORDOLOI
R/O H. NO. 5 NO. 1 SALBARI NEAR ANGANBADI SCHOOL,
P.S. NOONMATI
DIST. KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. T K MISRA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

03.01.2023

Heard Mr. T.K. Mishra, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the

petitioner viz. Diganta Bordoloi has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Noonmati Police Station Case no. 370/2022, registered under Section 392, Indian Penal Code [IPC] for the second occasion after rejection of his earlier bail application, A.B. no. 2592/2022 by an order dated 07.11.2022 after perusal of the materials in the case diary, produced on that date.

3. Mr. Mishra, learned counsel for the petitioner has submitted that the petitioner has been suffering from slip disc in L1 and L4 vertebrae and experiencing acute pain from rheumatoid arthritis since a few months. Therefore, at the time of commission of alleged offence, the petitioner was at his home as the doctor had advised him to be on bed rest. Mr. Mishra has referred to two prescriptions, annexed as Annexure-B to the case papers, in support of his such submission.

4. The earlier bail application, A.B. no. 2592/2022 came up for consideration on 17.01.2022 and on that date, the learned Additional Public Prosecutor had produced the concerned case diary. Upon perusal of the materials in the case diary and the contents of the FIR, this Court had observed as under :-

“ The First Information Report [FIR] has been lodged on behalf of M/s AVG Logistics Ltd. on 23.08.2022. In the FIR, it has been alleged that when goods containing Zarda and Pan Masala, worth Rs. 78,95,533/-, were being transported in 337 nos. of cartoons from BG Railway Station to the godwon at Betkuchi in the night on 22.08.2022 by a truck bearing registration no. HR-55/P-6901, some unidentified persons came in a car, took control of the truck near Patharkuari petrol pump and forced the driver to sit with them in their car. Thereafter, the driver was taken away in their car to another place and after few hours, the driver was left at a different place. When the driver came back to the place where the truck was intercepted, he found that the truck was empty.

In the course of the investigation, two persons viz. Sri Pranab Das and Sri Dilip Choudhury were arrested on 24.08.2022. In the process of arresting those two accused persons, three trucks loaded with stolen goods [Zarda and Pan Masala] were also recovered and seized.

Mr. Sarma, learned Additional Public Prosecutor who has received the concerned

case diary, has submitted that the two arrested accused persons in their statements had clearly implicated the petitioner as the person who led them in the act of robbery.

Though the learned counsel for the petitioner has urged that there is no involvement of the petitioner in the said act of robbery, the materials available in the case diary, collected during the investigation carried out so far, go to indicate the involvement of the petitioner in the act of robbery. In such view of the matter, this Court is of the considered view that the benefit of pre-arrest bail under Section 438, CrPC cannot be extended to the petitioner in view of availability of sufficient incriminating materials against him in the case diary. Consequently, the pre-arrest bail application under Section 438, CrPC stands rejected.”

5. It is settled that after rejection of application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete.

6. The ground in this second application is only with regard to the health condition of the petitioner. Having perused the documents annexed in support of such contention, this Court is not persuaded to reach at an opinion that the same can be a ground for re-consideration of the earlier order dated 07.11.2022. The grounds cited in this second application on behalf of the petitioner do not appear to be of any substance for re-consideration of the earlier order dated 07.11.2022 passed in A.B. no. 2592/2022. In such view of the matter, this Court is of the considered view that the present bail application under Section 438, CrPC which is preferred for the second time, lacks merit and consequently, the same is dismissed.

JUDGE

Comparing Assistant