

GAHC010271132022



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

Case No. : AB/3848/2022

BHABESH SARMA
S/O SRI PRAMOD SARMA, R/O VILL-PUB-NAOKATA, P.O.-NAOKATA, P.S.-
GORESWAR, DIST-TAMULPUR, ASSAM

VERSUS

STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

16.02.2023

Heard Mr. A. Choudhury, learned counsel for the applicant and Mr. R.J. Barua, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with the Goreswar P. S. Case No. 61/2022, under Sections 120[B]/342/506/325/384/389/306 of the IPC read with

section 75 of the Juvenile Justice [Care and Protection of Children] Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant, namely, Sri Bhabesh Sarma for grant of pre-arrest bail.

3. The said case has been registered on the basis of one FIR lodged by one Tinku Kumar on 10.07.2022, to the effect that on 09.07.2022, one Hirak Sarma and Manuj Nath, have lifted Shri Mithun Kumar while he was working in a Petrol Pump and taken him to the office of Pub-Depheli Anchalik Students' Union and there one Ankur Sarma, Hirak Sarma, Ambika Nath, Simanta Kalita, Bahiram Kumar, Utpal Kumar, Manuj Nath, Madhab Bezbaruah, Rakesh Deka, Bhabesh Sarmah and Sanjiv Sarmah have severely threaten him with one Lakhyadhar Kumar, and then beaten up them and put to hold ears and kneel down for two hours, suspecting their involvement in commission of theft in the shop of Ambika Nath and Bahiram Kumar at Naokata Chock about six months back, and thereafter, they demanded a sum of Rs. 10,000/ as fine from them. But, on their refusal, an agreement was made for payment of a sum of Rs. 5,000/ by each of them. Then Lakhyadhar Kumar has paid the sum of Rs.5000/ to Ankur Sarmah, and Mithun Kumar has taken 8 days time. He was also threatened that in the event of nonpayment of the amount, he will be made liable for every offence of theft at Naokata Chok. Thereafter, on 09.07.2022, Shri Mitun Kumar committed suicide in his house while his family members were not present.

4. Mr. Choudhury, learned counsel for the applicant submits that this is the second application under section 438 of the Cr.P.C. preferred by the applicant and the first one was rejected by this court vide order dated 15.11.2022, in AB No. 2324/2022. Mr. Choudhury further submits that this second bail application is preferred on the ground that the name of the applicant is possibly not there in the FIR lodged by the informant with Goreswar PS in respect of threatening and intimidating him for

withdrawing the case lodged by him and that he is a local person and he is ready to co-operate with the investigating agency, and therefore it is contended to allow the petition.

5. On the other hand, by producing the Case Diary before this Court, Mr. Barua, learned Additional Public Prosecutor submits that the name of the applicant is there in the FIR dated 02.07.2022, lodged by the informant for threatening and intimidating the informant of this case for withdrawing the case, and therefore, Mr. Das contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the Case Diary produced before this Court with the assistance of Mr. Barua, learned Additional Public Prosecutor and also perused the order dated 15.11.2022, in AB No. 2324/2022.

7. It appears from the order dated 15.11.2022, in AB No. 2324/2022, that having found sufficient materials in the case diary against the applicant, the said application was rejected. It also appears from the case diary that in the FIR dated 02.07.2022, the complainant has implicated the present applicant with the offence of threatening and intimidating him for not adducing any evidence before the court for withdrawing the FIR and upon the said FIR the Officer In-Charge of Goreswar PS has recorded the GD Entry No. 33 dated 02.09.2022. Further, it appears that investigating is yet to be completed.

8. In view of the materials collected so far in the case diary and also in view of the nature and gravity of the offence and punishment prescribed for the same and also considering the submissions of learned counsel for both the parties, this court is of the view that this is not a fit case where the privilege of pre-arrest bail can be extended to the applicant, and therefore, the same is dismissed.

9. Case diary be returned.

JUDGE

Comparing Assistant