

GAHC010271362022



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

Case No. : Bail Appln./3686/2022

SAHAB UDDIN
S/O AIJUL HOQUE,
R/O NO.1 KAKI,
P.O. AND P.S.- KAKI,
DIST.- HOJAI, ASSAM, PIN- 782442.

VERSUS

THE STATE OF ASSAM
REP. BY THE ASSISTANT/ ADDITIONAL P.P.

Advocate for the Petitioner : MR K TALUKDAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 17-01-2023

Heard Mr. S.D. Roy, learned counsel for the accused-petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By the application under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioner viz. Sahab Uddin has prayed for his release on bail in connection with Hojai Police Station Case no. 398/2022, originally registered for the offences under Sections 457/380, Indian Penal Code [IPC]. The offences under Sections 395/399/402, IPC have been added later on to Hojai Police Station Case no. 398/2022.

3. The accused-petitioner was arrested along with 5 [five] other accused-persons and were produced before the Court of learned Chief Judicial Magistrate, Sankardev Nagar, Hojai on 09.11.2022. On being so produced, all the said 6 [six] accused-persons including the accused-petitioner, were remanded to custody. On 10.11.2022, 5 [five] more accused persons connected to the alleged crime, were arrested.

4. Mr. Roy, learned counsel for the accused-petitioner has submitted that on 11.09.2022, two more accused persons viz. [1] Md. Sahid Afridi @ Alom and [2] Sri Bhim Kumar Singh @ Lal Mohan were arrested on 26.09.2022 and both of them were allowed to go on bail by the Court of learned Chief Judicial Magistrate, Hojai, Assam on 26.09.2022 after 16 [sixteen] days in custody. As the present accused-petitioner is similarly situated, this case may be considered in similar line.

5. Objecting to the above submissions of the learned counsel for the accused-petitioner, Mr. Sarma, learned Additional Public Prosecutor has submitted that the case of the present accused-petitioner is not similarly situated with the said two arrested persons viz. [1] Md. Sahid Afridi @ Alom and [2] Sri Bhim Kumar Singh @ Lal Mohan. The said two persons were arrested on suspicion that they were suspected to have appeared in the CCTV footages. Later on, it was found that their presences were not captured in the CCTV footages. As the involvement of the present accused petitioner in the crime has been found established, the claim on parity is not sustainable.

6. The First Information Report [FIR] was lodged with the allegation that in the night intervening 09.09.2022 and 10.09.2022, theft was committed in the house of the informant by unknown miscreants by breaking open the iron door grill. The miscreants had allegedly taken away agar scented wood, stored in the house of the informant, which was worth of Rs. 10,00,000/- [approx.]. As per the informant, the whole incident of theft was recorded in the CCTV system installed in the premises.

7. I have perused the materials in the case diary, collected during the course of

investigation carried out so far, including the statements of the present accused-petitioner and other arrested co-accused persons recorded under Section 161, CrPC. I have also perused the statements of the other witnesses recorded under Section 161, CrPC. From the statements of the arrested accused persons, it has emerged that the present accused-petitioner was directly involved in committing the crime in the house of the informant in the night intervening 09.09.2022 and 10.09.2022. On the basis of the CCTV footages of the cameras installed in the residence of the informant and the statements of the arrested accused persons, a number of accused persons were arrested. From the statements of the arrested accused persons, it has emerged that the crime was committed in the residence of the informant in an organized manner. During the course of investigation, a number of incriminating articles/objects, which were suspected to be used in committing the theft, from the possession of the accused-petitioner by a seizure list, M.R. no. 187/2022. It has further emerged that after committing the crime i.e. the theft of agarwood, the same were sold to different persons. It has further emerged that the present accused-petitioner is an accused in another crime case, i.e. Hojai Police Station Case no. 766/2020, registered under Sections 457/380, IPC. In his statement recorded under Section 161, CrPC, the accused-petitioner has depicted how the crime was committed. The chain of events as have emerged from the materials in the case diary, go to indicate that the crime has been committed in an organized and pre-planned manner. The statement under Section 161, CrPC are relevant in considering the prima facie case against an accused person in an application for grant of bail in a case which was carried out in an organized and coordinate manner.

8. In view of the availability of such incriminating materials against the accused-petitioner, this Court is of the considered view that the prayer for bail of the accused-petitioner cannot be allowed at this stage of investigation, as the investigation is still in progress. Accordingly, the prayer for bail of the accused-petitioner stands rejected.

JUDGE

Comparing Assistant