

GAHC010276352023



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

Case No. : Bail Appln./4457/2023

SHAHJAHAN ALI
S/O - LATE SOMEZ ALI @ SAMEZ UDDIN R/O- VILL.- BALIKURI K, P.S-
KALGACHIA, DIST- BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM
(THROUGH THE PUBLIC PROSECUTOR)

Advocate for the Petitioner : MR B DEKA

Advocate for the Respondent : PP, ASSAM

- B E F O R E -
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER

20.12.2023

Heard Mr. B. Deka, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Shahjahan Ali, who has been detained behind the bars since 09.11.2023 (for last 41 days) in connection with Kalgachia P.S. Case No.166/2023 under Sections 120(B)/448/365/354/324/511

of Indian Penal Code.

The gist of accusation in this case is that on 09.11.2023, one Abdul Karim had lodged an FIR before the Officer-In-Charge of Kalgachia Police Station, *inter-alia*, alleging that the accused persons named in the FIR including the present petitioner had unauthorizedly trespassed into the house of the informant and tried to take away the wife of informant and in the process, assaulted his wife and got her injured. It is also alleged in the FIR that the accused Nos.3 and 4, namely, Amidhar Saikia and Jogeswar Talukdar named in the FIR including the accused No.2/present petitioner, Sahajahan Ali, were apprehended by the local public and later were handed over to the police.

Learned counsel for the petitioner has submitted that the petitioner was only the driver of the vehicle bearing Registration No.AS-01-QC-6168 and the said vehicle was hired by the accused No.1, Afzal Ali and the petitioner was not involved in the offence alleged in the FIR.

Learned counsel for the petitioner has also submitted that, in the meanwhile, the main accused, i.e. Afzal Ali has already been granted bail by a Co-ordinate Bench of this Court by order dated 04.12.2023 passed in AB No.3936/2023 [Afjal Ali Vs. State of Assam].

Learned counsel for the petitioner has further submitted that considering the period of detention (41 days) as already undergone by the present petitioner, the petitioner may be allowed to go on bail.

On the other hand, Mr. P. Borthakur, learned Additional Public Prosecutor, Assam has produced the case diary of Kalgachia P.S. Case No.166/2023 and has submitted that there are incriminating materials against the present petitioner. He has also submitted that the victim, i.e. the wife of the first informant got scratch marks on the left arm though the injury report is awaited.

I have considered the submissions made by the learned counsel for both the sides and have perused the materials on record including the case diary of Kalgachia P.S. Case No.166/2023.

Considering the fact that the main accused in this case has already been enlarged on bail by a Co-ordinate Bench of this Court as well as considering the period of detention as already undergone by the present petitioner and the progress made in the investigation, this Court is of considered opinion that further custodial detention of the present petitioner does not appear to be necessary for fair completion of the investigation of Kalgachia P.S. Case No.166/2023.

In view of above, the petitioner, namely, Shahjahan Ali, is allowed to go on bail of Rs.30,000/- (Rupees thirty thousand) with one surety of like amount, subject to the satisfaction of the learned Chief Judicial Magistrate, Barpeta with following conditions:

- (i) that the petitioner shall co-operate in the investigation;
- (ii) that the petitioner shall not directly or indirectly make any inducement, threat or promise to the informant or 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 observations, the present bail application is hereby disposed of.

JUDGE

Comparing Assistant