

GAHC010287042023



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

Case No. : Bail Appln./4597/2023

GIYASUDDIN ALI,
S/O LATE BHAINUR ALI,
R/O PANIKHAITI RAIL GATE,
P.S. PRAGJYOTISHPUR,
DIST. KAMRUP (METRO), ASSAM.

-VERSUS-

THE N.F. RAILWAY
REPRESENTED BY STANDING COUNSEL, RAILWAY.

Advocate for the Petitioner : MR. B K MAHAJAN

Advocate for the Respondent : DY.S.G.I.

- B E F O R E -

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER

22.12.2023

- 1.** Heard Mr. B.K. Mahajan, learned counsel for the petitioner. Also heard Ms. B. Sarma, learned counsel for the respondent i.e. N.F. Railway.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Giasuddin Ali, who has been detained behind the bars since 02.12.2023 (i.e. for last 20 days) in connection

with RPF/Post/NGC's Case No.28/2023 under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966.

3. The gist of accusation in this case is that on 28.11.2023, the Senior Section Engineer (Works), Jagiroad had lodged an FIR to the IPF/NGC, N.F. Railway, *inter-alia*, alleging that during the station visit at PHI & TKC made by the first informant, huge quantity of various types of sheet piles were found to be stolen and loaded on Trailer No.NL-01-AB-5586.

4. On receipt of the said FIR, RPF/Post/NGC's Case No.28/2023 under Section 3(a) of the Railway Properties (Unlawful Possession) Act, 1966 was registered.

5. Learned counsel for the petitioner has submitted that the only allegation made against the present petitioner in the forwarding report while he was forwarded before the learned Special Railway Magistrate First Class, Guwahati is that when the railway materials were being loaded in the trailer, the present petitioner was also present there and was supervising the loading of the said materials.

6. Learned counsel for the petitioner has submitted that on 02.12.2023, the petitioner was called to attend the RPF/ Post/NGC and when he appeared before the said RPF/Post/NGC, he was arrested there. It is also stated by the learned counsel for the petitioner that the petitioner had made confessional statement.

7. Learned counsel for the petitioner has submitted that before arresting the present petitioner on 02.12.2023, no notice under Section 41A of the Code of Criminal Procedure, 1973 was issued to the petitioner and therefore, it is submitted that there has been violation of the guidelines of the Apex court issued in the case of "**Arnesh Kumar Vs. State of Bihar**", reported in **(2014) 8 SCC 273**.

8. Learned counsel for the petitioner has also submitted that wherever there is violation of the guidelines laid by the Apex Court in the case of "**Arnesh Kumar**" (supra) to give notice under Section 41 or 41 A of the Code of Criminal Procedure, 1973, such non-compliance would itself entitle an accused for grant of bail. In support of his submission, the learned counsel for the petitioner has also cited a ruling of the Apex Court in the case of "**Satendra Kumar Antil Vs. Central Bureau of Investigation and Anr.**", reported in **2022 SCC OnLine SC 825**.

9. Learned counsel for the petitioner has submitted that the maximum punishment prescribed under Section 3(a) of Railway Properties (Unlawful Possession) Act, 1966 is 5(five) years. Therefore, the guidelines of the Apex Court in "**Arnesh Kumar**" (supra) would be applicable in this case.

10. It is also submitted by the learned counsel for the petitioner that the petitioner has already been detained behind the bars for last 20 days and in the meanwhile, his statements were also recorded by the Investigating Officer and the petitioner is ready to co-operate in the investigation.

11. On the other hand, Ms. B. Sarma, learned counsel for N.F. Railway has submitted that there are sufficient incriminating materials against the present petitioner. It is submitted by the learned counsel for the N.F. Railway that the present petitioner while making his confessional statement before the Investigating Officer has admitted that it is under his direction that the Railway materials were picked up from the site from where it is stated to have been stolen.

12. Learned counsel for the Railway has also submitted that some other co-accused are also involved in this case who are yet to be arrested and further

custodial detention of the present petitioner would be required and therefore, she opposes the grant of bail to the present petitioner.

13. I have considered the submissions made by the learned counsel for both the sides and have gone through the materials available on record.

14. In this case, it is apparent that the petitioner has been behind the bars for last 20 days and his statements were recorded on more than one occasion by the Investigating Officer. It also appears from the case diary produced by the learned counsel for the Railways that the Investigating Officer failed to comply with the provisions of Section 41A of the Code of Criminal Procedure, 1973.

15. As observed by the Apex Court in the case of "**Satender Kumar Antil**" (supra) in para No.73 of the said case that the investigating agencies and officers are duty bound to comply with the mandate of Section 41 and Section 41A of the Code of Criminal Procedure, 1973 and the directions issued in this regard by the Apex Court in "**Arnesh Kumar**" (supra) and any non-compliance would entitle the accused for grant of bail.

16. In the instant case also, as there appears to be total non-compliance of the aforesaid guidelines and also considering the fact that the petitioner has been detained behind the bars for last 20 days, during which he was examined more than once by the Investigating Officer and if the petitioner continues to co-operate with the Investigating Officer, his custodial detention does not appear to be necessary for fair competition of the investigation of the case.

17. In view of above, the petitioner, namely, Giasuddin Ali, is hereby allowed to go on bail of Rs.50,000/- (Rupees fifty thousand) with one surety of like amount subject to the satisfaction of the Court of learned Special Railway Magistrate First Class, Guwahati, N.F. Railway with the 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.

18. With the above observations, this bail application is hereby disposed of.

JUDGE

Comparing Assistant