

GAHC020002962023



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

Case No. : Bail Appln./11/2023

ABDUL KHALEK
R/O NIHOTO VILLAGE, B.P.O KUHUBOTO, NIULAND, NAGALAND

VERSUS

THE STATE OF NAGALAND
KOHIMA NAGALAND

Advocate for the Petitioner : Z. KULNU

Advocate for the Respondent : P.P, NAGALAND

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

ORDER

14.09.2023

Heard Mr. Z. Kulnu, learned counsel for the applicant and Mr. Z. Zhimomi, learned Public Prosecutor for the State of Nagaland.

By filing this application under Section 439 of the CrPC, 1973, the applicant prays for release of the accused person Shri Nurul Mahammed @Nur Mohammed in connection with the Niuland PS Case No. 0014/2022 under Section 307, 326 and 560 of IPC

corresponding to GR Case No. 398/2022. He was arrested on 12.06.2022. The applicant claims to be father of the accused Nurul Mahammed @Nur Mohammed.

The brief facts of the case is that on 12.06.2022 at around 22:30 hours, an information was received from sources that one person (non-local) had tried to murder his father and his wife with a blunt object (bamboo pole). On reaching the spot, at Nihoto village, the person was identified as Nurul Mohammed. As a result of which his father, Shri Abdul Khalek and his wife received grievous injuries on the legs, head and hands due to inflictment by bamboo pole. Accordingly Nurul Mohammed was apprehended and the victims were rescued.

Pursuant to such information an FIR was registered as Niuland PS Case No. 0014/2022 under Section 307, 306 and 506 of IPC. The accused approached for bail before the learned trial court. The learned trial court *vide* order dated 24.03.2023 had rejected the bail application on the ground that *prima facie* case has been established against the accused for causing grievous hurt upon the victims with blunt bamboo pole. Again, the accused has approached the learned trial court for releasing him on bail. *Vide* order 06.06.2023, the learned trial court has rejected the bail application of the accused on the ground that if the accused is to be enlarged on bail the same may be done only after the examination of the family members.

Mr. Z. Kulnu, learned counsel for the applicant, submits that the accused has been languishing in jail since 12.06.2022 which is about 15 (fifteen) months. Police has filed the Charge sheet, charges have

been framed and the trial has already commenced. Therefore, there is no requirement for putting the accused in jail. The petitioner is a daily-wage worker, and he is the bread-earner of the family. Moreover the bail application has been filed by the father of the accused, who is alleged to be one of the victims, therefore he prays for releasing the accused person on bail.

Mr. V. Zhimomi, learned Public Prosecutor submits that since the petitioner is a permanent resident of Mangaldoi, in the district of Darrang, Assam, if the accused is released on bail there is a likelihood of absconding and he may escape from the trial. Moreover, as per the Charge sheet there is a *prima facie* case established against the accused. The charges have been framed and the trial has already commenced. However, family members are yet to be examined for which next date is fixed on 26.09.2023 for examination of the family members. In view of such a situation, the accused is not entitled for release on bail.

I have considered the submissions of the learned counsel for the parties and also perused the LCR. It is seen that though the trial has commenced, family members are yet to be examined as on date for which next date is fixed on 26.09.2023. In the considered view of this Court, non-examination of the family members in the trial stage would not be a bar for releasing the accused person on bail.

The accused was arrested on 12.06.2022 and he has been in judicial custody for about 15 (fifteen) months. Considering facts and circumstances of the case, this Court is inclined to grant bail to the accused person. Accordingly, the accused/Shri Nurul Mohammed is

directed to be released on bail with bail bond of ₹15,000/- (Rupees Fifteen Thousand) only with surety of like amount to the satisfaction of the learned Sessions Judge, Dimapur on the following conditions:

- 1) The accused shall extend cooperation in the trial and will appear as and when his appearance is required by the learned trial court.
- 2) The accused shall not in any manner influence the family members and no evidence shall be tampered with.
- 3) The accused shall not leave the jurisdiction of the learned Sessions Court, Dimapur without the written permission of the learned trial court.

Bail Application stands disposed of.

Sd/-
JUDGE

Comparing Assistant