

GAHC040000572024



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

Case No. : Crl.M.Appln./1/2024

Tungdang Lamgu
Son of Shri Longya Lamgu (Victim) resident of Modern Village, Seppa, PO
Seppa, East Kameng District, AP

VERSUS

The State of AP and Anr
represented by the PP of AP

2:Kojam Dada
resident of Kapu Dada village, P.O/P.S-Seppa, District-East Kameng,
Arunachal Pradesh, presently residing at Bosso Colony, Seppa, P.O/P.S-
Seppa, District-East Kameng, Arunachal Pradesh

Advocate for the Petitioner : Mr. R. L. Thungon
Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 23-04-2024

Heard Mr. R. L. Thungon, the learned counsel for the
petitioner. Also heard Ms T. Jini, the learned Additional Public

Prosecutor for the State respondent and Mr. D. Soki, the learned counsel for the respondent No.2/accused.

2. This is an application filed under Section 2 of the 439 of the Code of Criminal Procedure, 1973 read with Section 482 of the Cr.P.C. for cancellation of bail granted to the alleged accused person, namely, Shri Kojam Dada in connection with Seppa P.S Case No. 118/2023, registered under Sections 326/120B/506/34 of the IPC, in the bail application No.84/2023, passed by the learned Executive Magistrate, Seppa in the order dated 26.12.2023.

3. The case of the applicant is that the applicant filed an FIR on 16.12.2023, stating that on 15.12.2023, at around 6 pm, while the victim was at his residence, one Takam Dada attacked the victim with a local sword with an intention to kill him and thereby inflicted grievous injury on his forehead and right hand and after attacking he fled away from the spot. It is the further case of the petitioner that there was a dispute regarding ownership of "Mithun" between Takam Dada and applicant's uncle, and in meeting which was held 2(two) months back, victim and others present in the meeting had outrightly rejected the claim of Takam Dada. It is the further case of the petitioner that 2(two) other accused including the petitioner was present at the place of occurrence. Accordingly, FIR has been registered against 3(three) persons including the respondent No.2.

4. By the order dated 26.12.2023, the learned court of Executive Magistrate, Seppa granted bail to the respondent No.2, in the bail application No.84/2023, filed under Section 437 of the Cr.P.C, 1973. The petitioner is challenging the said order of the learned court of Executive Magistrate, Seppa dated 26.12.2023.

5. Mr. R. L. Thungon, the learned counsel for the petitioner submits that the aforesaid order of the Executive Magistrate dated 26.12.2023, granting bail to the respondent No.2, under Section 437 Cr.P.C is erroneous inasmuch as there is no *prima facie* satisfaction recorded by the learned court as regards the guilt of the respondent No.2.

6. Mr. T. Jini, the learned Additional Public Prosecutor on the other hand by producing the case record submits that there are no incriminating materials available against the respondent No.2, for the offence alleged. She further submits that considering the case record, the court of Executive Magistrate vide order dated 26.12.2023, granted bail to the respondent No.2.

7. Mr. D. Soki, the learned counsel for the respondent No.2 submits that there is no infirmity in the order dated 26.12.2024, by which, the learned Executive Magistrate has granted bail to the

respondent No.2. He further submits that the current application is not maintainable in terms of sub-section 2 of Section 439 of the Cr.P.C.

8. I have heard the submissions made at the bar and perused the materials available on record.

9. It appears that the learned court of Executive Magistrate, Seppa has heard the Investigating Officer who was present in the court and also after hearing the Public Prosecutor who had fairly submitted that there is no objection for grant of bail, granted bail to the respondent No.2. It further reveals that that the case diary produced by the office of the Public Prosecutor was also perused by the said court. The said case record has also been placed before this Court, from which, it appears that there is no incriminating material available against the respondent No.2 for the offence alleged. That being so, this Court finds no reasons to interfere with the order dated 26.12.2023, passed by the Executive Magistrate, Seppa granting bail to the respondent No.2. In view of the above, there is no merit in the appeal. As such, the Appeal stands dismissed.

No Cost.

Disposed of.

Return the case records.

JUDGE

Comparing Assistant