

GAHC010003272024



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

Case No. : AB/59/2024

ELIAS KHAN
S/O . ABDUL SATTAR KHAN, R/O- BHOMORAGURI, P.S TEZPUR, DISTRICT-
SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PUBLIC PROSECUTOR, ASSAM.

Advocate for the Petitioner : MD. I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

10.01.2024

Heard Mr. I. Hussain, learned counsel for the petitioner. Also heard Mr. K.K. Das, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Elias Khan, who is apprehending

his arrest in connection with P.R. Case No. 1426/2022 pending in the Court of learned Chief Judicial Magistrate, Sonitpur, Tezpur, corresponding to the Tezpur P.S. Case No. 1988/2021.

Learned counsel for the petitioner has submitted that the petitioner before moving this Court had approached the Court of learned Assistant Sessions Judge, Tezpur, by filing an application under Section 438 of the Code of Criminal Procedure, 1973 which was rejected by the said Court, by order dated 07.12.2023.

Learned counsel for the petitioner has also submitted that in the charge-sheet which has been laid in the PR Case No. 1426/2022 under Section 366 of the Indian Penal Code, the present petitioner has been shown as an absconder in column No. (ii) of the charge-sheet and therefore, the petitioner apprehends that he may be arrested in connection with this case. On a specific query made by this Court, the learned counsel for the petitioner has submitted that the petitioner is not aware of the fact as to whether any summons has been issued against the petitioner or not at this stage. However, he has submitted that the next date of the PR Case No. 1426/2022 is fixed in the month of February, 2024.

I have heard the submissions of learned Additional Public Prosecutor. In this case, it appears that though the charge-sheet has been laid against the present petitioner under Section 366 of the Indian Penal Code showing the present petitioner as an absconder in the charge-sheet. However, it is a settled law that the Trial Court would first issue summons to the present petitioner and as the petitioner is not aware as to what processes has been issued against the present petitioner at this stage, his apprehension of getting arrested in PR Case No. 1426/2022 does not have any basis. Therefore, this Court is not inclined to grant a favourable order under Section 438 of the Code of Criminal Procedure,

1973 to the present petitioner at this stage.

This Anticipatory Bail application is accordingly dismissed.

JUDGE

Comparing Assistant