

GAHC010008212024



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

Case No. : AB/132/2024

MD KHAIRUL ISLAM
S/O ALIM UDDIN
R/O VILL- TENGRIPAR
P.S. HOJAI
DIST. HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. D BHUYAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

01.02.2024

This is an application under Section 438 of Cr.PC, 1973 for granting pre-arrest bail to the petitioner, namely Md. Khairul Islam, who is apprehending arrest in connection with Hojai P.S Case No. 430/2023 registered under Sections 279/307/326/34 of IPC.

The case of the prosecution in brief is that on 26.09.2023, the informant lodged an FIR stating inter alia that on 23.09.2023 while a naka checking was going on at Kapasbari Chariali at about 4:55 P.M, two persons, including the accused/petitioner were coming in a motorcycle without wearing Helmet in an excessive speed from Sankardev Nagar side towards Nilbagan and when the Police signaled them to stop, they ignored the signal and with an intention to kill the on-duty home-guard, Md. Khairul Islam, hit him by the motorcycle in his left leg.

Mr. D. Bhuyan, learned counsel for the petitioner submits that the allegation made in the FIR is absolutely false and that the petitioner and the pillion rider were wearing Helmets and were driving the vehicle by following the traffic rules. He further submits that the home-guard suddenly came in the middle of the road and tried to stop the motorcycle and as such, the accident occurred as the petitioner could not control the vehicle and the home-guard sustained injuries.

Mr. K.K. Parashar, learned Addl. P.P strongly opposes the prayer of the

anticipatory bail and submits on the basis of the materials available on record that the home-guard, who was hit by the accused/petitioner has sustained grievous injury in his left leg.

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

It prima facie appears that the incident occurred while the accused/petitioner and the pillion rider were trying to run away in the motorcycle, from the check post as they were not wearing Helmets.

Considering the gravity of the offence vis-à-vis Article 21 of the Constitution of India, this Court is inclined to grant the privilege of pre-arrest bail to the petitioner.

Accordingly, it is provided that in the event of arrest, the petitioner namely Md. Khairul Islam shall be released on pre-arrest bail in connection with the above noted case on furnishing bail bond of Rs. 30,000/- with one surety of like amount to the satisfaction of the arresting authority, subject of course to the following conditions:-

- (i) That the petitioner shall appear before the Investigating Officer within 7 days, failing which on and from the 8th day, the interim pre-arrest bail order shall have no force;
- (ii) That the petitioner shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to

the Court or to any Police Officer; and

- (iii) That the petitioner shall refrain from committing any similar offences in future of which he is accused or suspected of commission.

With the above observation, this anticipatory bail application is hereby disposed of.

JUDGE

Comparing Assistant