

GAHC010008982024



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

Case No. : Bail Appln./175/2024

SHAIZ UDDIN @ SAIJUDDIN ALI
S/O SAHAR ALI
R/O VILL- PADMERALGA PART-I
P.S. FAKIRGANJ
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE PP, ASSAM

2:SURAJ JAMAL
S/O LATE JIRU MALLICK
R/O PADMERALGA PART-I
P.S. FAKIRGANJ
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

02.02.2024

Heard Mr. A. Ahmed, learned counsel appearing for the accused petitioner as well as Mr. B. B. Gogoi, learned Addl. P.P., Assam appearing for the State

respondent. The respondent No.2 has received notice but none has appeared.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely **Shaiz Uddin @ Saijuddin Ali**, has prayed for bail in connection with **Special Case No. 244/2022** arising out of **Fakirganj PS Case No. 138/2021** registered u/s **120(B)/376(3) of IPC, R/W Section 4 of POCSO Act.**

The scanned copy of the case record, as called for, is placed before this Court.

It is submitted on behalf of the petitioner that the petitioner could not appear before the trial court on 28.08.2022 and filed an application being petition No. 502/2023. It is submitted that the petitioner resides in a remote village and he could not cross the river as the engine of the boat broke down but the court issued an NBWA against the petitioner and forwarded him to custody on the strength of the NBWA. It is submitted that the petitioner was regularly attending and he was earlier on bail. On his absence for one day, he was forwarded to custody. The learned counsel for the petitioner has relied on the order dated 24.01.2024 in connection with *Krishna Sharma alias Krishna Kumar Sharma Vs the State of West Bengal & Another* in Criminal Appeal No. 383/2024 @ SLP (Crl.) No. 12829/2023 whereby it has been observed that:

“3. Learned counsel appearing for the appellant submits that the appellant could not attend the court on the said date as there was traffic jam due to VIP movements. He further submits that the lawyer of the appellant also could not remain present as his vakalatnama was withdrawn on an earlier day.

4. Learned counsel for the respondent/state and the learned counsel for the complainant opposed the petition.

5. However, we find that merely because the appellant did not appear personally could not have been a ground for cancellation of bail. The parameters for grant of bail and cancellation of bail are totally different. The bail already granted may be cancelled, if it is found that the person who has been granted the benefit of bail has violated any of the conditions or misused the liberty by influencing the witnesses or tempering with the evidence.”

It is also submitted that a false case has been slammed against the petitioner and he has been unnecessarily roped in with a serious allegation. However, the petitioner is willing to co-operate with the trial and he is willing to abide by any bail condition if imposed upon him.

I have considered the submissions at the bar with circumspection. I have considered the submission that the petitioner could not appear before the Court and NBWA was issued against him and he was forwarded to custody on the strength of NBWA. Earlier the petitioner was attending the court regularly and he was on bail. Considering all aspects his bail petition is allowed.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.50,000/- (Rupees Fifty Thousand)** with a suitable surety of like amount to the satisfaction of learned trial court subject to the following condition-

- i) That the accused petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of;

The bail application is disposed of.

JUDGE

Comparing Assistant