

GAHC010015502024



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

**Case No. : AB/203/2024**

PABITRA BORO  
S/O DABLA BORO  
R/O BOGORIBARI, BHERGAON  
TANGLA, UDALGURI, ASSAM- 784521 HAVING PERMANENT ADDRESS- AT  
VILL- KHUCHIGAON,  
P.O. NICHILAMARI, P.S. TANGLA  
DIST. UDALGURI, ASSAM  
PIN- 784522

VERSUS

THE STATE OF ASSAM  
REP. BY ITS PP, ASSAM

**Advocate for the Petitioner : MR. S P ROY**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**Date : 23.02.2024**

Heard Mr. S.P. Roy, learned counsel for the applicant. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with Tangla P.S. Case No. 5/2004, under Section 25(1B)(a) of the Arms Act, this application under Section 438 Cr.P.C. has been preferred by the applicant, namely, Pabitra Boro, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by SI Hirak Jyoti Pegu on 06.01.2024. The essence of allegation made in the FIR dated 06.01.2024, is that acting on a tip off, the informant along with other police staff, conducted search in the house of the applicant Pabitra Boro and recovered six numbers of 0.22 ammunitions from one of the rooms of his house and seized the same in presence of witnesses. Later on, acting on another tip off, they have conducted search in the house premises of the applicant and recovered one 0.22 pistol with magazine (US made) from the tin roof shed of his house and seized the same in presence of witnesses.

4. Mr. Roy, learned counsel for the applicant submits that the applicant is innocent and no way involved in the offence alleged in the FIR, and that the arms and ammunitions were recovered from one of the houses of the accused, which was let out to some other tenants, and that the applicant is ready to cooperate with the investigating agency, and as the arms and ammunitions were not recovered from the conscious possession of the applicant, Mr. Roy has contended to extend the privilege of pre-arrest bail to the applicant. In support of his submission, Mr. Roy has also referred to one decision of Hon'ble Supreme Court in the case of *Gunwantlal Vs. the State of Madhya Pradesh*, reported in (1972) 2 SCC 194.

5. On the other hand, Mr. B. Sarma, learned Addl. Public Prosecutor has produced the case diary before this Court and submits that the I.O. has

collected sufficient incriminating materials against the applicant in connection with the allegation made in the FIR, and referring to the seizure list prepared by the I.O., Mr. Sarma submits that the I.O. has recovered six numbers of 0.22 ammunitions from one of the rooms of the house of the applicant and one 0.22 pistol was recovered from the roof shed of the house of the applicant, and therefore, Mr. Sarma has contended to dismiss the application as investigation is going on.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the application and the documents placed on record and also perused the case diary with the assistance of Mr. B. Sarma, learned Addl. Public Prosecutor and also gone through the decision of Hon'ble Supreme Court in *Gunwantlal (supra)*.

7. It is to be noted here that in the aforementioned case, Hon'ble Supreme Court has held that the issue of constructive possession is dependent on the evidence to be adduced at the time of trial. And as such, the case law would not advance the case of the applicant.

8. The case diary indicates that the I.O. has collected sufficient incriminating materials against the applicant. The seizure list and the statement of the witnesses, indicate recovery of six numbers of 0.22 ammunitions from the one of the rooms of the house of the applicant and one 0.22 pistol from the roof shed of the house of the applicant. And as such, the contention of Mr. Roy is misplaced. Further, it appears that investigation is still going on.

9. Having considered the materials collected so far in the case diary and having considered the stage of investigation and also the nature and gravity of the offence and punishment prescribed for the same, this Court is of the view that this is not a fit case where the privilege of anticipatory bail can be granted

to the applicant. And accordingly, the anticipatory bail application stands dismissed.

10. Case diary be returned.

**JUDGE**

**Comparing Assistant**