

GAHC010023682024



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

Case No. : Bail Appln./345/2024

BADAN DEKA
S/O BUDDHI DEKA
R/O VILL- NO. 3 TANKIBASTI
P.O. KALIKHOLA
P.S. DIMAKUCHI
DIST. UDALGURI BTR,
PIN-7845626

VERSUS

THE STATE OF ASSAM AND ANR.
REP BY THE PP ASSAM

2:PANKAJ BORO
S/O SRI BIPUL BORO
R/O VILL- NO. 3 TANKIBASTI
P.O. KALIKHOLA
P.S. DIMAKUCHI
DIST. UDALGURI BTR
PIN-7845626
PH.NO. 708616828

Advocate for the Petitioner : MRS. S KHATANIAR

Advocate for the Respondent : PP, ASSAM

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

07.02.2024

Heard Ms. S. Khataniar, learned Legal Aid Counsel for the accused and Ms. A. Begum, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439[1][b] read with Section 440 of the Code of Criminal Procedure, 1973, is preferred by accused namely, **Sri Badan Deka**, for modification of the bail amount so imposed by the learned Special Judge, Udalguri, in order dated 02.09.2023, in connection with Dimakuchi P.S. Case No. 79/2023, under Sections 354[B]/511 of the IPC read with Section 8 of the POCSO Act.

3. Ms. Khataniar, learned Legal Aid Counsel for the accused submits that the accused was arrested on 11.07.2023, in connection with Dimakuchi P.S. Case No. 79/2023, and he was granted bail by the learned Special Judge, Udalguri, vide order dated 02.09.2023, and in the said order, the learned court below has allowed the accused to go on bail on furnishing a bail bond of Rs. 20,000/- with one surety of like amount. Ms. Khataniar further submits that though the accused was allowed to go on bail, yet, he has been languishing in jail hazot till date, as he is a very poor person and is a daily wage earner and he has no immovable property in his name, therefore, he could not furnish the bail bond of said amount and therefore, it is contended that the amount of bail bond may be reduced to Rs. 5,000/- only.

4. On the other hand, Ms. Begum, learned Additional Public Prosecutor, has opposed the petition and submits that the amount of bail bond, so imposed

by the learned court below is not excessive and as such, the same warranted no modification.

5. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record.

6. It appears that the accused was arrested on 11.07.2023, in connection with Dimakuchi P.S. Case No. 79/2023, and he was granted bail by the learned Special Judge, Udalguri, vide order dated 02.09.2023, on the condition that he shall furnish a bail bond of Rs. 20,000/- with one surety of like amount. As the accused is a very poor person and he is a daily wage earner and he has no immovable property in his name, he could not be able to furnish the bail bond and consequently he is still languishing in jail hazot.

7. Though the amount of bail bond fixed by the learned court below appears to be not so excessive, yet, in the given financial background of the petitioner the amount seems to be excessive. No doubt that the power imposing condition is discretionary, yet, the same is required to be exercised with restrained. So any condition, which has no reference to the fairness or propriety the same cannot be countanced as permissible under the law.

8. Considering the submissions of learned counsel for both the parties and also considering the above facts and circumstances on the record and further considering the fact that the accused has been languishing in jail hazot since 11.07.2023, this Court is inclined to allow this petition by modifying the bail amount so fixed by the learned court below.

9. Accordingly, it is provided that the accused shall furnish a bail bond of Rs. 5,000/- [five thousand] with one surety of like amount, instead of Rs.

20,000/- to the satisfaction of the learned court below.

10. In terms of above, this bail application stands disposed of, the accused be enlarged on bail.

Comparing Assistant

JUDGE