

GAHC010029702024



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

Case No. : Bail Appln./411/2024

AFTAR ALI @ AKHTAR ALI
R/O VILL MANIARI TINIALI PS. PALASHBARI DIST KAMRUP ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. ABUL KALAM AZAD

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

13.02.2024

Heard Mr. A.K. Azad, learned counsel for the accused and Ms. A. Begum, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused namely, **Aftar Ali @ Akhtar Ali**, who has been languishing in jail hazot since 30.12.2023, in connection with the **Palashbari P.S. Case No. 45/2024**, under Sections 325/354 of the IPC, for granting bail.

3. The said case has been registered on the basis of one FIR lodged by one Aktara Begum, on 05.02.2024. The essence of allegation made in the FIR is that on the same day at about 10 am, one Aftar Ali has beaten her husband and caused injury

over his right arm and also beaten over her chest and body, while they were fishing in a pond of a field.

4. Mr. Azad, learned counsel for the accused submits that the accused was arrested on 07.02.2024, and since then he has been languishing in jail hazot for last 37 days. Mr. Azad further submits that in connection with the same occurrence, the accused had also lodged one case, on the same day, with the Palashbari P.S., under Sections 447/325/379/506/511/34 of the IPC, but the same was registered only on 06.02.2024 and that the present FIR is a counter blast FIR against the accused and the allegations leveled in the said FIR are false. Mr. Azad also submits that though the case has been registered under Sections 325/354 of the IPC, the punishment is only up to 7 years. Mr. Azad also submits that while causing arrest of the accused by the IO, he has not complying with the provision of Section 41(A) Cr.P.C. and that the accused is ready to cooperate with the investigating agency and therefore, it is contended to allow this petition.

5. On the other hand, Ms. Begum, learned Additional Public Prosecutor, after obtaining instruction from the IO, submits that the Section 41(A) of the Cr.P.C. has not been complied with here in this case. However, Ms. Begum also submits that at this stage the case diary may be called for.

6. 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.

7. It appears that the accused submits that the accused person was arrested on 07.02.2024, and since then he has been languishing in jail hazot for last 37 days. Further, it appears that while causing arrest of the accused by the IO, he has not complying with the provision of Section 41(A) Cr.P.C.

8. Having regards to above and also having regards to the observation made by Hon'ble Supreme Court in the case of **Arnesh Kumar vs. The State of Bihar**, reported in **(2014) 8 SCC 273** and in the case of **Satender Kumar Antil Vs.**

Central Bureau of Investigation & Anr., reported in **2022 LiveLaw (SC) 577**, this Court is of the view that the accused is entitled to bail for non-compliance of Section 41(A) of the Cr.P.C.

9. Accordingly, this Court is inclined to allow this application, without the case diary and therefore, it is provided that on furnishing a bond of Rs. 50,000/- only, with one surety of like amount to the satisfaction of the learned **Chief Judicial Magistrate, Kamrup Amingaon**, the accused be enlarged on bail.

10. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant