

GAHC010032432024



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

Case No. : Bail Appln./469/2024

MD. SAIBOR RAHMAN @ BUDHA
R/O BRAHMAUTRA CHAPORI
P.S. GINGIA
DIST. BISWANATH, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MD. I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

04.03.2024

Heard Md. I. Hussain, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor, Assam.

This is an application under Section 439 of the Code of Criminal Procedure, 1973 for granting of regular bail to the petitioner, i.e. Md. Saibor

Rahman @ Budha, who was arrested and produced before the Court of learned Judicial Magistrate First Class, Biswanath on 10.08.2023, in connection with P.R. Case No. 199/2021, pending before the Court of learned Judicial Magistrate First Class, Biswanath Charialia in connection with Gingia P.S. Case No. 47/2018 (corresponding to G.R. No. 179/2018) registered under Section 302/201/34 of the IPC, arising out of FIR dated 20.04.2018.

The fact of the case is that an FIR was lodged on 20.04.2018 alleging that the informant's son Md. Anwar Hussain was involved in theft with the FIR named accused persons since last one year and upon the informant coming to know about the matter, she restrained her son from these type of activities, instead the son of the informant threatened her with dire consequences.

On last 18.04.2018, the accused persons called the son of the informant from the home during night time at around 11:00 PM and killed him slitting his throat with sharp weapon and dumped the dead body at the drain of Bagmari Tea Estate by covering the dead body with garbage and on the next date, the labourers of Bagmari Tea Estate saw the dead body and informed the matter to the house of the informant. Accordingly, FIR was registered.

After completion of the investigation, charge-sheet was submitted whereby, the petitioner was projected as an absconder.

Upon receiving charge-sheet, the learned Judicial Magistrate First Class, Biswanath Charialia registered the said case as P.R. Case No. 199/2021 and took cognizance against all the accused persons as well as the present petitioner under Section 302/201/34 IPC.

The case of the petitioner is that he has been arrested on the strength of NBWA issued by the learned Judicial Magistrate First Class, Biswanath Charialia and produced them before the said court on 10.08.2023.

Md. I. Hussain, learned counsel for the petitioner submits that the co-accused Md. Amir Hussain and Md. Aminul Hoque are already on bail and the petitioner was arrested on the strength of the NBWA which was never received by him.

He further draws the attention of this court to the order dated 07.08.2023, wherein, it is clearly reflected that the NBWA could not be executed against the petitioner.

Mr. K.K. Parasar, learned Additional Public Prosecutor, on the other hand, strongly opposes the prayer for regular bail.

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

It appears that before the NBWA could be executed the petitioner was arrested. It further appears that the petitioner has been languishing in jail since last 207 days.

Considering the length of detention and the totalities of the matter, this court is of the considered view that further detention of the petitioner is not justified.

In view of the above, the above named petitioner is hereby allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the learned Judicial Magistrate First Class, Biswanath Charialia in connection with the above mentioned case, subject to the conditions that:-

- (i) the petitioner shall appear regularly on all dates fixed from time to time by the trial court;
- (ii) the petitioner shall not directly or indirectly make any inducement, threat or promise to the informant or to any other

persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court;

(iii) the petitioner shall surrender his passport, if any, (if not already surrendered) before the learned Judicial Magistrate First Class, Biswanath Charialia;

(iv) the petitioner shall not leave the territorial jurisdiction of the learned Judicial Magistrate First Class, Biswanath Charialia without prior permission from him and without an intimation to the Investigating Officer of, in connection with P.R. Case No. 199/2021 during the pendency of the investigation;

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

JUDGE

Comparing Assistant