

GAHC010039102024



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

Case No. : Bail Appln./543/2024

MD. ATABUR RAHMAN
S/O JOHUR UDDIN, R/O NO. 1 GORUMARA, P.S.- SAMAGURI, DIST.-
NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY SPECIAL P.P., ASSAM.

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 02.04.2024

Heard Mr. S.M. Abdullah P, learned counsel for the accused-petitioner.
Also heard Mr. B. Sharma, learned Standing counsel, Forest.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **Md. Atabur Rahman**, in connection with

Samaguri P.S. Case No. 45/2024, registered under **Section 51(1) of Wildlife (Protection) Act, 1972.**

3. On 08/02/2024, an FIR has been lodged before the officer-in-charge Samaguri P.S., alleging *inter alia* that on 07/02/2024 at about 11 P.M., SDPO, Kaliabor, received an information that one Rhino horn was concealed inside the house of the petitioner. Accordingly, a team has arrived in the house of the petitioner at No.1 Gorumara village and conducted search and recovered one suspected rhino horn and accordingly seized the same. In connection with such recovery, a case was registered vide Samaguri P.S. case no 45/2024.

4. It was urged by learned counsel for the petitioner that the petitioner has been languishing in jail *hazot* for last 55 days since his arrest on 09/02/2024. The alleged offence u/s 51 (1) of Wildlife (Protection) Act, 1972, the mandatory period of custody is 60 days. The petitioner has been detained in custody for last 55 days. Hence, considering the period of detention, the petitioner may be enlarged on bail. It is also submitted that the horn which was allegedly recovered from the possession of the petitioner, is not a rhino horn and he was arrested purely on suspicion. It is further submitted that by that time the investigating agency might have completed the investigation of the case and as such detention of the accused/petitioner is not required for the purpose of investigation of the case.

5. In response, learned Standing counsel, Forest has pointed out that there is a State amendment u/s 51 (1) of Wildlife (Protection) Act, 1972, and in first proviso to section 51 in place of "three years", "seven years" and "ten thousand", the words "seven years", ten years" and "fifty thousand"

respectively shall be substituted. In the second proviso, for the words "three years", "seven years" and "twenty five thousand", the words "ten years", "life imprisonment" and "seventy five thousand" respectively shall be substituted. According to Mr. Sharma, as per State amendment, the offence under section 51 second proviso, the mandatory period is 90 days, as such, bail may not be granted to the petitioner.

6. It is also the submission of the learned counsel for the petitioner that as per state amendment Section 51 (B) was introduced which states in Section 51 (B)(2) that – "Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable under this Act, shall be released on bail unless–

“(a) The Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) Where the Public Prosecutor opposes the application, this court is satisfied that there are reasonable grounds for believing that the accused is not likely to commit any offence while on bail.”

7. I have considered the submissions of the learned counsel for the parties. I have also perused the case diary. On perusal of the case diary, it reveals that one suspected rhino horn was recovered from the house of the present petitioner. The FSL report has not yet been received as such, it cannot be ascertained at this stage whether the seized article is a rhino horn or not. The case is still under investigation. However, as per state amendment pertaining to first proviso of section 51, the mandatory period appears to be 60 days. On perusal of case diary, it is not reflected that prior to the alleged offence, the petitioner was involved in any such offence under

the Wildlife Protection Act.

8. In view of the above and considering the length of detention, bail is granted to the petitioner.

9. Accordingly, the petitioner, named above, shall be released on bail in connection with **Samaguri P.S. Case No. 45/2024**, registered under **Section 51(1) of Wildlife (Protection) Act, 1972**, on furnishing bail bond of **Rs.1,00,000/-** with **two suitable sureties** of the like amount, to the satisfaction of learned SDJM, Kaliabor, Nagaon, Assam.

The direction for bail is further subject to the conditions that the petitioner:

(a) shall not leave the territorial jurisdiction of learned SDJM, Kaliabor, Nagaon, Assam without prior written permission from him/her;

(b) shall not hamper with the investigation, or tamper with the evidence of the case;

(c) shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

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

11. Return the case diary.

JUDGE

Comparing Assistant