

GAHC010042412024



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

Case No. : AB/583/2024

MD. ROFIQUE ALI @ RAFIQ ALI
S/O TASLIM UDDIN
R/O VILL- NO. 2 GALANDHI
P.S. KHARUPETIA
DIST. DARRANG

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : TUN RAJKHOWA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

09.04.2024

Heard Mr. R. Bora, learned counsel for the applicant and Mr. B. Sarma, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with the **Dalgaon P.S. Case No. 411/2023**, under Section 379 of the IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant namely, **Md. Rofique**

Ali @ Rafiq Ali for grant of pre-arrest bail.

3. The above noted case has been registered on the basis of one FIR lodged by one Abidur Rahman, Lense Naik of Doipam Police Outpost, on 25.12.2023. The essence of the allegation, made in the FIR is that the informant along with his staff were attending patrolling duty on 24.12.2023, and at about 2:30 AM, they have intercepted one Baleno vehicle, without registration number, in front of the house of Monohar Ali and on checking the same, recovered two numbers of cattle from the same.

4. Mr. Bora, learned counsel for the applicant submits that this is the second anticipatory bail application preferred by the applicant and the earlier one was rejected by this Court, vide order dated 12.01.2024, in A.B. No. 107/2024. Mr. Bora further submits that there is no change of circumstance after rejection of the earlier anticipatory bail application and the only ground for filing this second anticipatory bail application is that the IO has not furnished any notice to the applicant, under Section 41(A) of the Cr.P.C. Mr. Bora also submits that the applicant is ready to cooperate with the investigating agency and therefore it is contended to allow the petition.

5. On the other hand, by producing the Case Diary before this Court, Mr. Sarma, learned Additional Public Prosecutor submits that there are sufficient incriminating materials in the case diary against the applicant and there is no change of circumstance in favour of the applicant and as such, this anticipatory bail application is not maintainable and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the Case Diary produced before this Court with the assistance of

learned Additional Public Prosecutor.

7. Indisputably, this is the second anticipatory bail application preferred by the applicant and the first one was rejected by this Court, vide order dated 12.01.2024, in A.B. No. 107/2024, after perusing the case diary and admittedly, there is no change of circumstance in favour of the applicant, after rejection of the earlier anticipatory bail application.

8. It is to be noted here that in the case of **State of Tamilnadu vs. S.A. Raja**, reported in **(2005) 8 SCC 380**, Hon'ble Supreme Court has observed that subsequent bail application is maintainable, only when there is change of circumstance in favour of the applicant.

9. In the present case, since there is no change of circumstance is arisen in favour of the applicant, this Court is of the view that this second anticipatory bail application is not maintainable and accordingly, the same stands dismissed.

10. However, it is provided that the IO shall invariably comply with the provision of Section 41(A) of the Cr.P.C., before proceeding against the applicant, in view of the judgment of Hon'ble Supreme Court, in the case of **Arnesh Kumar vs. The State of Bihar**, reported in **(2014) 8 SCC 273** and also in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.**, reported in **2022 LiveLaw (SC) 577**.

11. In terms of above, this AB stands disposed of.

12. The case diary be returned.

JUDGE

Comparing Assistant