

GAHC010048662024



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

Case No. : Bail Appln./678/2024

SAMRAT ROY
S/O LATE KAMAL ROY, R/O HOUSE NO 27, LOKNATH PATH, LALGANESH,
P.S. FATASIL AMBARI, DISTRICT KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

11.03.2024

Heard Mr. B. Chowdhury, learned counsel for the accused and Mr. R.J. Barua, 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, **Samrat Roy**, who has been languishing in jail hazot since 30.12.2023, in connection with the **Hatigaon P.S. Case No. 27/2024**, under Sections 406/420 of the IPC, for granting bail.

3. The said case has been registered on the basis of one FIR lodged by

ASI Dhrubajyoti Sharma, on 19.02.2024. The essence of allegation made in the FIR is that in connection with GD Entry No. 26/2024, dated 17.02.2024, he has conducted the investigation and on checking IMEI number of mobile phone, one Samrat Roy has been apprehended and brought to the police station and during interrogation he disclosed that he has handed over the stolen Honda Generator to an organization namely, TCE Courier Express.

4. It is to be noted here that the GD Entry No. 26/2024, dated 17.02.2024, has been recorded on the basis of one complaint lodged by one Jitu Deugharia, on 17.02.2024, wherein it is alleged that one individual took the complainant's Honda Generator Model No. 70IS, worth of Rs. 2,50,000/-, for Rs. 2,500/- per day on rental basis and the generator was collected from Beltola Tiniali and delivered to Cafe at Zoo Road Tiniali. Thereafter, the complainant having visited the case found that the person in question had deceitfully absconded with the equipment.

5. Mr. Chowdhury, learned counsel for the accused submits that the accused was arrested on 19.02.2024, and since then he has been languishing in jail hazot for last 22 days. Referring to the forwarding report, Annexure – 3 (Page No. 22), Mr. Chowdhury submits that while causing arrest of the accused by the IO, he has not complied with the provision of Section 41(A) Cr.P.C. Mr. Chowdhury further submits that the said generator has already been seized from TCE Courier Express, Betkuchi. Mr. Chowdhury also submits that the accused is ready to cooperate with the investigating agency and therefore, it is contended to allow this petition.

6. On the other hand, Mr. Barua, learned Additional Public Prosecutor submits that he has not received the case diary. Mr. Barua further submits that the Section 41(A) of the Cr.P.C. has not been complied with by the IO, here in

this case.

7. 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.

8. It appears that the accused was arrested on 19.02.2024, and since then he has been languishing in jail hazot for last 22 days. Further, it appears that while causing arrest of the accused by the IO, he has not complied with the provision of Section 41(A) Cr.P.C.

9. 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.

10. 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 (M) at Guwahati**, the accused be enlarged on bail.

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

JUDGE

Comparing Assistant