

GAHC010053992024



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

Case No. : Bail Appln./752/2024

MD. SUBHAHAN ALI @ SUBHAHSAN ALI
S/O LATE BASER ALI
R/O VILL- IRON JONGLA PART-III
P.S. DHUBRI
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. B K SEN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

23.04.2024

Heard Mr. B.K. Sen, learned counsel for the accused and Mr. B. Sarma, learned Addl. Public Prosecutor for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused namely, **Md. Subhahan Ali @ Subhahsan Ali**, who has been languishing in jail hazot in connection with

Fatasil Ambari P.S. Case No. 149/2023, under Sections 489(A)/489(B)/489(C) of the IPC, for grant of bail.

3. It is to be noted here that the said case has been registered on the basis of an FIR lodged by S.I. Utpal Chutia, of Fatasil Ambari P.S. on 07.07.2023. The essence of allegation made in the said FIR is that in connection with G.D. Entry No. 205/2023, dated 07.07.2023, he along with his staff have apprehended two persons namely, Jahidul Ahmed and Subhahsan Ali and on being searched their body, they have recovered a bundle, containing 100 pieces of suspected fake Indian Currency Notes of one hundred denomination and seized the same preparing seizure list in presence of witnesses. Accordingly, after registration of a case, investigation was carried out and on completion of the investigation the I.O. had laid charge sheet, being Charge Sheet No. 86/2023, against the aforesaid accused person to stand trial in the court, under Sections 489(A)/489(B)/489(C) of the IPC.

4. Mr. Sen, learned counsel for the accused submits that the accused was arrested on 07.07.2023, and since then he has been languishing in jail hazot. Mr. Sen further submits that this is the third bail application preferred by the accused and the first application was dismissed by this Court, vide order dated 22.09.2023, in BA No. 2915/2023 and the second application was dismissed vide order dated 03.01.2024, in BA No. 4450/2023. Mr. Sen also submits that this third bail application is being preferred on the ground that the wife of the accused is suffering from some gynecological problem and as such, she requires some treatments, which could not be provided in absence of the accused and that the accused has school going children. Mr. Sen also submits that though the charges have been framed against the accused under Sections 489(A)/489(B)/489(C) of the IPC, yet, the only applicable Section here in this case would be 489(C) of

the IPC, which is bailable and that there is no evidence to show the involvement of the accused with the offence under Sections 489(A)/489(B) of the IPC though charged were framed on that count. Mr. Sen further submits that nothing has been recovered from the residence of the accused during the course of the investigation, except some bundles of papers and mobile phone. Mr. Sen also submits that one of the co-accused has already been enlarged on bail by the learned court below and the learned court below after framing charges against the accused, has examined only one witness, out of 5 cited witnesses in the charge sheet and that there is no immediate prospect of the trial being concluded and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Sarma, learned Additional Public Prosecutor by producing the case diary before this Court, submits that there are materials available on the record to show the complicity of the accused with the offence under Sections 489(A)/489(B) of the IPC apart from Section 489(C) of the IPC and therefore, it is contended to dismiss the petition. However, Mr. Sarma has not disputed the new ground (medical ground) on which this application is being preferred.

6. Having heard the submissions 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 scanned copy of the case record received from the learned court below, with the assistance of learned Additional Public Prosecutor.

7. It appears that the accused was arrested on 07.07.2023, and since then he has been languishing in jail *hazot*. Further, it appears that this is the third bail application preferred by the accused and the first application was dismissed by this Court, vide order dated 22.09.2023, in BA No. 2915/2023 and the second application was dismissed vide order dated 03.01.2024, in BA No. 4450/2023. It

also appears from the documents placed before this Court that the wife of the accused is suffering from some gynecological problems and requires treatment. It also appears that the learned court below after framing charges against the accused, has examined only one witness, out of 5 witnesses cited in the charge sheet and that there is no immediate prospect of conclusion of the trial also.

8. Having considered above, especially the ground that the wife of the accused is suffering from gynecological problem and she needs treatment and also considering the assurance given by the accused that he will appear before the learned court below on each and every date and will face the trial, this Court is inclined to allow this petition.

9. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- only, with two sureties of like amount to the satisfaction of the learned **District and Sessions Judge No. 4 (FTC), Kamrup (M) at Guwahati**, the accused be enlarged on bail.

10. The above privilege is however subject to the following conditions:-

(i) The accused shall appear before the court of learned **District and Sessions Judge No. 4 (FTC), Kamrup (M) at Guwahati**, on each and every date;

(ii) The accused 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; and

(iii) The accused shall not leave the jurisdiction of the learned **District and Sessions Judge No. 4 (FTC), Kamrup (M) at Guwahati** without prior permission.

- 11.** In terms of above, this bail application stands disposed of.
- 12.** The case diary be returned.

Comparing Assistant

JUDGE