

GAHC010067352024



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

Case No. : AB/862/2024

YEASHIR ISLAM
S/O SRI ABDUL JALIL, R/O MOLLAPARA, P.S.-MANGALDOI, P.O.-HOWLY
MOHANPUR, PIN-784125, DIST- DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. D K DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 10.04.2024

- 1.** Heard Mr. D. K. Das, learned counsel for the petitioner. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Yeashir Islam* who is apprehending his arrest in connection with Baihata Chariali P.S. Case No. 257/2023 under Sections 392/34 of the Indian Penal Code.

3. The gist of accusation in this case is that one Nipan Chamua on 29.08.2023 had lodged an FIR before the Officer-In-charge of Baihata Police Station, *inter alia*, alleging that the informant is working as a delivery boy of Shadow Fan Delivery Partner. It is also stated in the FIR that on 29.08.2023 at about 11:00 AM when he went to Bezera in front of UCO Bank for delivering of two numbers of mobile phones, he contacted the customer over Mobile Phone No. 7086863613, and the customer came to Bezera on a black colour KTM bike and told him that they will deposit the amount through Google Pay and they asked the scanner in order to pay the amount and at that time, when the informant tried to find the scanner, the persons snatched the mobile phone from him.

4. The learned counsel for the petitioner has submitted that the petitioner is in no way involved in the offence alleged in the FIR. In fact, it is submitted that the mobile phone bearing No. 7086863613 belongs to one Abu Firdaus Raji @ Rahul, who had ordered the two mobile phones and which were delivered on the date of the incident. It is also stated by learned counsel for the petitioner that the co-accused Abu Firdaus Raji @ Rahul had already been arrested and the present petitioner, who is a student of B.A. 1st Semester at Mangaldoi College, is unknown to the accused Abu Firdaus Raji @ Rahul. However, he is in no way involved in the offence alleged in the FIR.

5. On the other hand, learned Additional Public Prosecutor has opposed the prayer for grant of anticipatory bail to the petitioner on the ground that the case diary shows that there are incriminating materials against the present petitioner as the petitioner was with the main accused when the alleged offence was committed and as from the materials available in the case diary, it appears that the present petitioner is the friend of the main accused, namely, Abu

Firdaus Raji @ Rahul.

6. I have considered the submissions made by learned counsel for both the sides and have perused the material available in the case diary of Baihata Chariali P.S. Case No. 257/2023.

7. Though, it appears from the material available in the case diary that the present petitioner is an acquaintance and a friend of main accused, namely, Abu Firdaus Raji @ Rahul, however, from the statement of the Abu Firdaus Raji @ Rahul recorded under Section 161 of the Code of Criminal Procedure, 1973, it was clear that it was Abu Firdaus Raji @ Rahul, who had snatched the mobile phone from the informant and it also appears that the mobile phone which was snatched by Abu Firdaus Raji @ Rahul was sold to one doctor, who is the resident of Mission Chariali Tezpur. The material available in the case diary only shows that the petitioner is the acquaintance of the main accused. However, it shows that he did not snatch the mobile phone from the first informant.

8. Moreover, the fact that the present petitioner is a student of B.A. 1st Semester at Mangaldoi College, this court of considered opinion that custodial interrogation of the present petitioner may not be necessary, if he otherwise cooperates in the investigation, for fair completion of the investigation of Baihata Chariali P.S. Case No. 257/2023.

9. In view of the above, the above named petitioner is hereby directed to appear before the Investigating Officer of Baihata Chariali P.S. Case No. 257/2023 within a period of ten days from the date of this order and cooperate in the investigation. If he does so, within the stipulated period of time, in the event of his arrest, in connection with Baihata Chariali P.S. Case No. 257/2023, the above named petitioner shall be allowed to go on bail of Rs.30,000/-

(Rupees Thirty Thousand) with one surety of like amount subject to the satisfaction of the arresting authority with following conditions:-

- i. That the petitioner shall cooperate in the investigation and shall appear before the Investigating Officer;
- ii. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any other persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts before the Investigating Officer;

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

11. Send back the case diary.

JUDGE

Comparing Assistant