

GAHC010075782024



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

Case No. : Bail Appln./1071/2024

MD. ABDUL MALEQUE
S/O MOHAR ALI
R/O PRAMILA JARONI
P.S. KACHUWA
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

20.04.2024

1. Heard Mr. S.M. Abdullah P, learned counsel for the petitioner and also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam, appearing for the State respondent, as well as Mr. F. Haque, learned counsel for the informant.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Md. Abdul Maleque, who has been detained behind the bars since 19.03.2024 (for last 33 days), in connection with Nagaon P.S. Case No. 231/2024, under Section 120(B)/406/420/468/471 of the Indian Penal Code.

3. The gist of accusation in this case is that on 18.03.2024, one Shariful Islam had lodged an FIR before the Superintendent of Police, Nagaon against the present petitioner and one HDB Finance as accused, *inter alia*, alleging that the petitioner had lured the first informant by telling them that he would provide financial assistance from government scheme to the first informant and on that pretext, he had collected the personal documents of the informant and obtained loan in the name of the informant for purchasing two wheeler vehicle. However, neither the loan amount was provided to the petitioner, nor the vehicle has been provided and it is alleged that the petitioner in conspiracy with HDB Financial Services Ltd. has siphoned-off the money of the first informant and other similarly situated persons.

4. Learned counsel for the petitioner has submitted that on the basis of the FIR lodged by the first informant, Shariful Islam, Nagaon P.S. Case No. 231/2024 was registered 120(B)/406/420/468/471 of the Indian Penal Code.

5. It is submitted by the learned counsel for the petitioner that for the offences against which the case has been registered maximum punishment is not more than 7 years. Therefore, there is a mandate of issuance of notice under Section 41A of the Code of Criminal Procedure, 1973 in this case. However, no such notice was issued to the present petitioner and he was arrested without following the mandate of the Apex Court in the case of "**Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.,**"

reported in “**(2022) 10 SCC 51**,”.

6. Learned counsel for the petitioner has also submitted that otherwise also the petitioner has already been detained behind the bars since 19.03.2024 and considering the period of detention, he may be allowed to go on bail.

7. Though the learned Additional Public Prosecutor has opposed the grant of bail to the present petitioner, however, considering the fact that no notice under Section 41A of the Code of Criminal Procedure, 1973 was issued to the present petitioners, though under the facts and circumstances of this case, the notice under Section 41A of the Code of Criminal Procedure, 1973 ought to have been issued to the present petitioner. Further, considering the progress made in the investigation and period of detention already undergone, this court is of considered opinion that further custodial detention of the above named petitioner may not be necessary for fair completion of the investigation of Nagaon P.S. Case No. 231/2024, if he co-operates in the investigation.

8. In view of above, the above named petitioner is allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Nagaon with conditions that:-

- i.** the petitioner shall appear before the Investigating Officer of Nagaon P.S. Case No. 231/2024 as and when so required for the sake of proper investigation of the case; and
- ii.** the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the trial court in the trial pending against the present petitioner.

9. With the above observations, this bail application is hereby disposed

of.

10. Send back the case diary.

JUDGE

Comparing Assistant