

GAHC010089322024



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

Case No. : AB/1184/2024

MD. MIJANUR RAHMAN @ MIJANUR HOQUE
S/O MD. ABDUL MUTALEB
R/O VILL- PACHIM GAROIMARI
P.S. MOIRABARI, DIST.MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY LD. PP, ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 18-06-2024

- 1.** Heard Mr. R. Ali, learned counsel for the petitioner. Also heard Mr. K. Baishya, 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, *Md. Mijanur Rahman @ Mijanur Hoque* in connection with PRC Case No. 189/2024 (corresponding to Morigaon P.

S. Case No. 382/2023) which is pending before the Court of the learned Additional Chief Judicial Magistrate, Morigaon under Sections 120B/419/420/465/471/313/323 of the Indian Penal Code.

3. The gist of accusation, in this case, is that on 06.10.2023, the Joint Director of Health Services, Morigaon, Assam, had lodged an FIR against one Md. Nazrul Islam before the Officer-in-charge of Morigaon Police Station, *inter alia*, alleging that the accused named in the FIR is indulging in unlawful activities like abortion and illegally practicing as a doctor by advertising himself as an experienced doctor. On receipt of the said FIR, Morigaon P. S. Case No. 382/2023 was registered and the investigation was initiated. Ultimately, on completion of the investigation, charge-sheet was laid against eight numbers of accused persons including the present petitioner.

4. On receipt of the chargesheet, the Court of learned Additional Chief Judicial Magistrate, Morigaon, took the cognizance of offence under Sections 120B/ 419/ 420/ 465/ 468/ 471/ 270/ 313/ 326 of the Indian Penal Code and issued processes to the accused persons including the present petitioner.

5. Learned counsel for the petitioner has submitted that though the learned Committal Court has issued summons to the present petitioner, however, as the name of the petitioner has been shown as an absconder in the charge-sheet and as the cognizance has also been taken, *inter alia*, under Section 313 of the Indian Penal Code which is an offence triable exclusively by the Court of Sessions and for which the punishment prescribed is up to life imprisonment, the Court of learned Chief Judicial Magistrate may not grant bail to the present petitioner even if he appears before the said court in compliance

with the summons issued to him. Hence, it is submitted that the petitioner is apprehending that he may be detained behind the bars, if he appears before the learned Committal Court i.e., the Court of learned Additional Chief Judicial Magistrate, Morigaon, unless he is given protection under Section 438 of the Code of Criminal Procedure, 1973.

6. On the other hand, learned Additional Public Prosecutor has submitted that there are incriminating materials against the present petitioner of being involved in the alleged offence. It has also been submitted that the co-accused of this case have made incriminating statement against the present petitioner and he has also submitted that as the offence involved in this case is serious in nature, the petitioner may not be given the protection of anticipatory bail and he may be directed to appear before the trial court where he may pray for the bail.

7. I have considered the submissions made by the learned counsel for both the sides and have perused the scanned copy of the case records of PRC Case No. 189/2024 as well as scanned copy of the case diary of Morigaon P. S. Case No. 382/2023 which was called for in connection with this case.

8. Though, it appears that there are incriminating materials against the present petitioner on record, however, it also appears that the investigation has already been completed and the charge-sheet has been laid against the present petitioner and there is no materials on record to show that he has been indulging in any activities like threatening of witnesses or had attempted to tamper any evidence.

9. As the punishment for one of the offences for which cognizance has been taken, namely, Section 313 of the Indian Penal Code, is up to life imprisonment, under the facts and circumstances of this case, the embargo of Section 437 (1)(ii) of the Code of Criminal Procedure, 1973 would be applicable on the committal court, while considering the application for bail by the petitioner, even if he appears before the said court and prays for bail. Under such circumstances the committal court would be left with no other option but to remand the petitioner to custody, under section 209(b) of the Code of Criminal Procedure, 1973 unless he is given protection under section 438 of the Code of Criminal Procedure, 1973.

10. As it has been already discussed in the foregoing paragraphs, that if the petitioner co-operates in the trial, his custodial detention may not be necessary for fair completion of the trial. Hence, the above-named petitioner is directed to appear before the Court of learned Additional Chief Judicial Magistrate, Morigaon on next date fixed i.e., 15/07/2024. If he so appears before the said court on the aforesaid date, he shall be allowed to go on bail of ₹ 30,000 with one surety of like amount to the satisfaction of learned Additional Chief Judicial Magistrate, Morigaon subject to following conditions: -

- i. That the above-named petitioner shall regularly appear before the Committal Court/Trial Court on each and every date so fixed by the said court and shall cooperate in his trial;
- ii. That the above named petitioner shall not directly or indirectly make any inducement, threat or promise to any of the listed witnesses of the said case or any other 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.

- 11.** With above observation, this anticipatory bail application is disposed of.

JUDGE

Comparing Assistant