

GAHC010100832024



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

Case No. : AB/1317/2024

ASIF
S/O ISLAM UDDIN, R/O HOUSE NO. 852, GALI NO. 9, OLD MUSTAFABAD,
P.S.-KARAWAL NAGAR, DELHI-110094

VERSUS

STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 19-06-2024

Heard Mr. R. Thadani, learned counsel for the petitioner Asif, who has filed this application under Section 438 of the Code of Criminal Procedure, 1973 with a prayer for pre-arrest bail as he is apprehending arrest in connection with Mushalpur Police Station Case No. 33/2024 registered under Sections 457/379/511/34 of the Indian Penal Code, 1860 (IPC for short) and

subsequently added Sections 401/413, now registered as PRC Case No. 234/2024 under Sections 457/379/511/401/413/34 of the IPC.

2. Heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the respondent State.

3. It is submitted on behalf of the petitioner that he is willing to appear before the Trial Court and face trial but he is apprehending arrest as he is booked under a Sessions triable case. It is submitted on behalf of the petitioner that he will not evade arrest and he will cooperate with the trial. It is also submitted on behalf of the petitioner that as the petitioner is a permanent resident with house and landed property, there is no scope of jumping the bail.

4. The learned Additional Public Prosecutor has raised objection stating that the petitioner has not cooperated with the investigation and there are incriminating materials against the petitioner in the Case Diary.

5. I have considered the submissions at the bar with circumspection. I have taken a pragmatic view. The petitioner is willing to cooperate with the trial. The FIR was lodged on 17.03.2024 and investigation culminated into charge sheet on 24.04.2024. I have also relied on the decision of the Hon'ble Supreme Court in *Mahdoom Bava Vs. Central Bureau of Investigation in connection with SLP (Crl.) No. 376/2023* wherein it has been observed that:

“10. More importantly, the appellants apprehend arrest, not at the behest of the CBI but at the behest of the Trial Court. This is for the reason that in some parts of the country, there seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order. The correctness of such a practice has to be tested in an appropriate case. Suffice for the present to note that it is not the CBI which is seeking their custody, but the appellants apprehend that they may be remanded to custody by the Trial Court and this is why they seek protection. We must keep this in mind while deciding the fate of

these appeals.”

6. In the instant case, at the initial stage of the trial itself, before charge has been framed, the petitioner has appeared and has prayed for anticipatory bail.

7. Considering all aspects and in view of my foregoing discussions, petition is allowed. In the event of his arrest, the petitioner shall be enlarged on bail on furnishing a bail bond of Rs.50,000/- (Rupees Fifty Thousand) with two local sureties of like amount to the satisfaction of the learned jurisdictional Court under the conditions that:

The petitioner shall cooperate with the trial and not jump the bail, failing which bail order shall stand cancelled.

8. In the above terms, this Anticipatory Bail application stands disposed of.

JUDGE

Comparing Assistant