

GAHC010103312024



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

Case No. : AB/1358/2024

ABBAS UDDIN
S/O SIRAJ UDDIN, R/O VILL- TAJURTHAL, GAINACHERRA, P.S.-
BADARPUR, P.O.-ANGLARBAZAR, DIST- KARIMGANJ, PIN-788806

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 19-07-2024

- 1.** Heard Mr. S. C. Biswas, 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, *Abbas Uddin*, who is apprehending his arrest in connection with PRC Case No. 308/2024 corresponding to Badarpur P.S. Case No. 146/2023.

3. The learned counsel for the petitioner has submitted that though the petitioner has received summons from the learned Committal Court, however, as the case against the present petitioner and seven others accused persons under Sections 302/120(B) of the IPC and hence, the embargo of Section 437(1)(i) would come into play and the Court of learned Judicial Magistrate, 1st Class may not grant bail in this case as the punishment prescribed for 302 is up-to the death penalty and, therefore, he apprehends that even if he appears before the learned Committal Court in compliance with the summons received by him he may be remanded to custody.

4. The learned counsel for the petitioner has submitted that in this case the allegations levelled against the present petitioner are not true and he has been implicated and roped in the case only because he happens to be the brother of the husband of the deceased. It is also submitted that the petitioner is ready to face the trial and his custodial detention is not necessary for fair completion of the trial.

5. On the other hand, the learned Additional Public Prosecutor has opposed the grant of bail to the petitioner on the ground that the case involves offence of serious nature under Section 302 of the Indian Penal Code.

6. I have considered the submissions made by the learned counsel for the rival parties and gone through the scanned copy of the case record which was requisitioned in connection with this case.

7. It appears from the materials available on record that though the charge-sheet has been laid against the present petitioner also, however, specific allegations were levelled against one Siyab Uddin, who is the husband of the deceased and the brother of the present petitioner. It also appears that though the

present petitioner has received summons from the Court of learned Judicial Magistrate, 1st Class, Karimganj which is the Committal Court where presently the PRC Case No. 308/2024 is pending, however, as the offence under Section 302 is involved in this case, it may happen that even if the petitioner appears in compliance to the summons received by him before the said Court, the said Court may not grant bail to him due to embargo of Section 437(1)(i) and the Court may remand him to custody on his appearance due to such embargo.

8. This Court is of considered opinion that custodial detention of the present petitioner may not be necessary, if he cooperates in the trial and does not indulge in threatening any of the listed witnesses.

9. In view of the above, this anticipatory bail application is disposed of with a direction that the petitioner shall appear before the Committal Court within fifteen days from the date of this order and on his appearance the said Court shall grant him bail of Rs.30,000/- (Rupees Thirty Thousand) with one surety of like amount subject to the satisfaction of the said Court with following conditions:-

(i) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of this case so as to dissuade such person from deposing against the petitioner in the ensuing trial before the Trial Court;

(ii) That the petitioner shall appear before the Trial Court as and when so required by the Trial Court and shall cooperate in the trial;

(iii) That the Trial Court may impose any additional condition for bail during trial if it deems fit to do so, to procure regular

attendance of the petitioner during trial.

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

JUDGE

Comparing Assistant