

GAHC010105722024



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

Case No. : Bail Appln./1546/2024

SAIFUL ISLAM @ SAIFUL ISLAM SIDDIQUE
S/O ABU BAKKAR SIDDIQUE
R/O H/NO. 46, GRC ROAD,
BAPUJI NAGAR,
P.S. NOONMATI, GUWAHATI-781020
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MD A RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 19.06.2024

- 1.** Heard Mr. A. Rahman, learned counsel for the petitioner. Also heard Ms. N. Das, learned Additional Public Prosecutor for the State respondent.
- 2.** This application under Section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Saiful Islam @ Saiful Islam Siddique, who has been detained behind the bars since 14.05.2024, in connection with PRC Case No. 670/2022 arising out of Manikpur P.S. Case No. 151/2024 under Section 366(A)/343/376/34 of the Indian Penal Code.

3. The learned counsel for the petitioner has submitted that the petitioner was arrested on the strength of non-bailable warrant of arrest issued by learned Chief Judicial Magistrate, Bongaigaon in PRC Case No. 670/2022. However, it is submitted that prior to issuance of non-bailable warrant of arrest against the present petitioner, learned Committal Court had issued summons to the present petitioner. However, without ascertaining the due service of summons on the petitioner, the same court issued non-bailable warrant of arrest against him.

4. The learned counsel for the petitioner has submitted that the petitioner was not aware about the pendency of PRC Case No. 670/2022 as he received no summons from the Court in respect of the said case and he was directly arrested on 14.05.2024 on the strength of non-bailable warrant issued.

5. It is also submitted by the learned counsel for the petitioner that during the investigation stage of the case in the year 2020, the petitioner apprehending his arrest had approached to this Court and a Coordinate Bench of this Court by order dated 06.01.2020 passed in AB Case No. 4244/2019 had granted anticipatory bail to the petitioner with certain conditions.

6. The learned counsel for the petitioner submits that the petitioner is ready to cooperate in his trial.

7. I have heard the learned Additional Public Prosecutor also, as well as perused the scanned copy of the PRC Case No. 670/2022. A bare perusal of the order dated 09.11.2023 would reveal that learned Chief Judicial Magistrate, Bongaigaon on the same date had issued non-bailable warrant of arrest against

the present petitioner without ascertaining due service of summons issued by it on him.

8. Under the said circumstances, it may be presumed that the petitioner was not aware about the pendency of the PRC Case No. 670/2022 before the learned Chief Judicial Magistrate, Bongaigaon. Moreover, the petitioner was also granted anticipatory bail during investigation by a Coordinate Bench of this Court as submitted by learned counsel for the petitioner. The petitioner has also completed more than 30 days in custody.

9. The learned counsel for the petitioner has also submitted that in the meanwhile, the PRC Case No. 670/2022 has already been committed to the Sessions Court and Sessions Case No. 33/2024 has been registered and same is pending before the Court of learned Assistant Sessions Judge, Bongaigaon. He has also submitted that no bail application has been filed before the learned Trial Court.

10. During the pendency of the trial, it is the Trial Court which should first be approached for bail by an accused. Hence, this bail application is disposed of with an observation that the petitioner may file an application seeking bail before the learned Trial Court, and if such an application is filed, the same shall be considered by the said Court, after considering the facts which are highlighted herein above in this order.

11. This bail application is accordingly disposed of.

JUDGE

Comparing Assistant