

GAHC010106582024



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

Case No. : AB/1402/2024

MANOJ PATHAK
S/O SRI SUNANDA PATHAK, R/O VILL- CHEKI, P.O.-HATHINAPUR, P.S.-
PATACHARKUCHI, DIST- BAJALI, ASSAM, PIN-781325

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. N K KALITA
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 31.05.2024

Heard Mr. NK Kalita, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 438 Cr.P.C. seeking pre-arrest bail by the petitioner, namely **Sri Manoj Pathak**, apprehending arrest in connection with Mushalpur P.S. Case No. 49/2024 (Corresponding to G.R. Case No. 320/2024) under Sections 509/ 506 I.P.C. read with Section 67 of the I.T. Act, 2000.

It is submitted by the learned counsel for the petitioner that the police is in search of the petitioner in connection with the alleged offence but he is no way connected with this case.

On the other hand, the learned Addl. P.P. has submitted that both the alleged offences are bailable in nature.

I have considered the submissions of the learned counsel for both the parties.

Section 438 Cr.P.C. reads as follows:

“438. Direction for grant of bail to person apprehending arrest.- (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Sessions for a direction under this Section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;***
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;***
- (iii) the possibility of the applicant to flee from justice; and***
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,***

either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

On a bare look at the aforesaid provisions, it reveals that Section 438 Cr.P.C. is applicable only in case of non-bailable offence. The offences under Sections 509/506 IPC are bailable in nature.

Regarding offence under Section 67 of the I.T. Act, 2000, the punishment in case of first offence is 3 years of imprisonment. As per Section 77B of the I.T. Act all the offences with 3 years imprisonment are bailable in nature.

It is not stated in the petition as well as in the submission of the learned counsel for the petitioner whether this is the subsequent offence committed by the petitioner under Section 67 of the I.T. Act. As such, the petition filed under Section 438 Cr.P.C. is not maintainable.

In view of the above, this anticipatory bail application is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant