

GAHC010107452023



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

**Case No. : I.A.(CrI.)/419/2023**

GITARTHA SAIKIA,  
S/O KIRAN SAIKIA, R/O BOIRAGIMOTH, P.O. BOIRAGIMOTH, DIST.  
DIBRUGARH, ASSAM,

VERSUS

DEBRAJ BORGOHAIN AND ANR.  
S/O JAYANTA BORGOHAIN R/O J P NAGAR OPP. MILANJYOTI SANGHA P.O.  
C.R. BUILDING P.S DIBRUGARH DIST. DIBRUGARH ASSAM

2:THE STATE OF ASSAM

REP. BY THE PP  
ASSAM

**Advocate for the Petitioner : MR. S U AHMED**

**Advocate for the Respondent : PP, ASSAM**

Linked Case : AB/683/2023

DEBRAJ BORGOHAIN  
S/O JAYANTA BORGOHAIN R/O J P NAGAR OPP. MILANJYOTI SANGHA P.O.  
C.R. BUILDING P.S DIBRUGARH DIST. DIBRUGARH ASSAM

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP  
ASSAM

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Advocate for : MR. A CHAUDHURY  
Advocate for : PP  
ASSAM appearing for THE STATE OF ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**Date : 19.06.2024**

Heard Mr. S.U. Ahmed, learned counsel for the petitioner. Also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor appears for the State of Assam and Mr. S.M. Abdullah, learned counsel for respondent No.1.

**2.** This Interlocutory Application has been filed praying for cancellation of the bail granted to the writ petitioner by order dated 19.04.2023 passed in AB/683/2023. By this order, the petitioner was granted bail with the following conditions:-

*“ Accordingly, it is provided that in the event of arrest of the petitioner, named above, in connection with the above noted case, he shall be released on interim pre-arrest bail upon furnishing a bail bond of Rs.25,000/- (Rupees Twenty Five Thousand) with 1 (one) local surety of like amount to the satisfaction of the arresting authority, subject, of course to the following conditions:*

- (i) That the petitioner shall appear before the investigating Officer within 10 (ten) days from today;*
- (ii) That the petitioner shall not hamper or tamper with the investigation in any manner;*

- (iii) *That the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police office; and*
- (iv) *That the petitioner shall not change his residence without obtaining prior written permission from the concerned investigating officer of the case.*

*In the event, the petitioner is found to have violated any of the above conditions or is found to be involved in other offences, the Investigating Officer shall be at liberty to apply for recall/cancellation of the interim bail granted to the petitioner.”*

**3.** Pursuant to the grant of bail, this present Interlocutory Application has been filed seeking cancellation that the bail ought not to have been granted as the petitioner has suffered grievous injuries and in support thereof he has placed medical documents. It is also submitted that because of the injuries suffered, he had to go out of the State for further medical care where he underwent a surgery.

**4.** In paragraph 10 of the Interlocutory Application there is a categorical averment that the case diary which contained the Medical Report did not reflect the actual injury sustained by the petitioner and that the concerned Investigating Officer for his vested interests did not submit the genuine report.

**5.** It is also stated in the I/A that after obtaining bail, the Opposite Party on 29.04.2023 at about 2.30 in the morning had thrown stones in the house of the applicant and shouted different slang words addressing all family members and had also threatened to kill the applicant if he does not withdraw the case pending before the Dibrugarh Police Station.

- 6.** Upon such threats being made to the applicant, the mother of the applicant had approached the Director General of Police with a complaint dated 02.05.2023 intimating the necessary details regarding the apprehension expressed.
- 7.** Further allegations are made against the Opposite Party that he is a person involved in several illegal activities and several FIRs have been pending against the applicant and therefore, the order dated 19.04.2023 passed in AB/683/2023 granting the anticipatory bail should be cancelled.
- 8.** Several opportunities were granted to the respondents calling for reports in respect of the steps taken for investigation and the apprehension faced by the applicant from the concerned Investigating Officer. The report called for from the Investigating Officer is placed before this Court today by the learned Addl. P.P. The report reflects that on the allegations made by the applicant, investigations were conducted but no evidence was found regarding the involvement of the Opposite Party/accused person in respect of these allegations.
- 9.** The Opposite Party has also filed an affidavit-in-opposition opposing the claims of the applicant. Learned counsel representing the Opposite Party has submitted that at present the case is committed to the Sessions Court and the trial has progressed in the matter.
- 10.** The Opposite Party is appearing before the competent Court on each date. He further submits that there is no allegation that he has violated any of the conditions on which the anticipatory bail was granted.
- 11.** The learned counsel for the parties have been heard. Pleadings on record have been carefully perused.

**12.** From the report which is placed before the Court received by the learned Addl. P.P, it is seen that the report reflects that the steps undertaken by the Investigating Officer pursuant to the complaint received. The steps undertaken are extracted as under:-

*“1. After receipt of information one General Diary Entry was made at Gabharupathar O.P. vide GDE No.431 dated 18.02.2023 and A.S.I Santosh Sonowal was endorsed to enquire the matter and to conduct the preliminary investigation.*

*2. That after enquiry it is learnt that the victim was admitted at ICU of AMCH, Dibrugarh and thereafter the statement of complainant/victim was recorded under Section 161 Cr.P.C. at AMCH, Dibrugarh.*

*3. That on the same day the I.O. went to the place of occurrence and examined the local witnesses present there and found sufficient grounds to register the case and accordingly a case has been registered being Dibrugarh P.S. Case No. 94/2023 under Section 325/307/34 IPC.*

*4. During investigation it is found that the accused Debraj Borgohain physically attacked Dr.Gitartha Saikia with a Rod and lathi and the victim sustained grievous injury on his left ear and back of the neck.*

*5. That thereafter the I.O conducted house search at the house of the accused Debraj Borgohain but he was not present at the time of the house search, and it is found that the accused was absconding after commission of the offence.*

*6. That the I.O submitted a prayer to the superintendent of Police DSB for CDR and PTL of the accused mobile number and after perusal nothing any evidence found as the mobile number was switch off after the occurrence.*

*7. That thereafter S.I. Abhijit Doley, I/C Gabharupather O.P was endorsed for further investigation of the case and the case diary has been duly received for investigation.*

*8. That thereafter the I.O re-examined the complainant and also examined one*

witness namely, Puja Bharali.

*9. That thereafter again house search was conducted at the house of the accused but this time also there was no any family member of the accused was present at the house and it is found that the parents of the accused are also absconding.”*

**13.** Taking into consideration the submissions made by the learned counsel for the parties and upon careful perusal of the report as well as the pleadings on record and also taking into consideration that the matter is at the stage of trial and no instances have been placed before the Court to project that the petitioner is not appearing before the competent Court or has violated any of the conditions referred to in the bail order dated 19.04.2023 passed in AB/683/2023. This Court is of the view that the prayer for cancellation of the bail by way of Interlocutory Application at this stage is not called for.

**14.** Rejection of a bail and cancellation of bail already granted have to be dealt with differently. In *Raghubir Singh and Ors Vs State of Bihar and Ors* reported in (1986) 4 SCC 481, the Apex Court held that:-

*“Generally the grounds for cancellation of bail, broadly, are, interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. The due administration of justice may be interfered with by intimidating or suborning witnesses, by interfering with investigation, by creating or causing disappearance of evidence etc. The course of justice may be evaded or attempted to be evaded by leaving the country or going underground or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar or other unlawful acts. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in 60 days, after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are*

*reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed”.*

Similarly, in *Dolat Ram and Ors Vs State of Haryana* reported in (1995) 1 SCC 349 it was held that:-

*“Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted”.*

**15.** Perusal of the law laid down by the Apex Court reveals that this is not a case which falls within any of the instances referred to which calls for cancellation of the bail, which has already been granted by order dated 19.04.2023 passed in AB/683/2023.

**16.** In that view of the matter, this court is of the view that the prayer for

cancellation of the bail is not called for at this stage.

**17.** This Interlocutory Application, accordingly stands dismissed.

**18.** A copy of the report received from the Investigating Officer is kept in the case record.

**JUDGE**

**Comparing Assistant**