

GAHC010115342024



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

Case No. : AB/1519/2024

KHON ENGHI @ KHAN ENGHEE
S/O LATE SARTHEY ENGHI, R/O VILL- MUKHIM ENGHI GAON, P.O.-
JENGKHA, P.S.-KHERONI, DIST-WEST KARBI ANGLONG, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. S K SINGH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

17.07.2024

Heard Mr. S. K. Singh, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 438 of the code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with PRC No.25/2022 arising out of Kheroni P.S. Case No.56/2022 under Sections 143/458/365/302/201 of the Indian Penal Code.

3. The scanned copy of the Case Record as well as the Case Diary has been received and I have perused the same.

4. It is submitted by the learned counsel for the petitioner, Mr. Singh, that the accused/petitioner is not involved in the alleged offence at all, but his name has been mentioned as accused No. 1 in the FIR. He also submits that the address of the petitioner mentioned in the FIR, Village Langhood Enghee Gaon, Kheroni Police Station, West Karbi Anglong, is incorrect, as the petitioner actually resides in Village Mukhim Inghi Gaon, Jengkha Post Office, Kheroni Police Station, District West Karbi Anglong. Throughout the investigation, the police searched for him in Village Langhood Enghee Gaon, Kheroni Police Station, West Karbi Anglong, despite him not residing there. To substantiate his plea, the learned counsel for the petitioner has also furnished the voter identity card of the petitioner.

5. He further submits that during the investigation, neither did the police

search for him, nor did he receive any summons to appear before the learned Court below. It is further submitted that the alleged incident occurred on 19.06.2012, and after seven years, the charge-sheet was filed on 31.12.2019. The petitioner only became aware of the pendency of this case after the issuance of the NBWA and P/A by the learned Court below. However, he is prepared to appear before the learned Court below and face trial if granted interim protection as there is apprehension of arrest in connection with this case.

6. On the other hand, the learned Additional Public Prosecutor, Mr. Borthakur, submits that the case was charge-sheeted on 31.12.2019 and summons was issued against the accused/petitioner on various occasions by the learned Court below. However, to evade arrest by the police, the accused/petitioner never appeared before the learned Court below or the investigating officer during the investigation of this case. He further submits that from the statements of witnesses, it appears that after the alleged incident, the accused/petitioner left Village Langhood Enghee Gaon to avoid arrest by the police.

7. In this context, Mr. Singh, learned counsel for the petitioner, has submitted that the incident occurred on 19.06.2012 and the summons was issued to the wrong address, i.e., Village Langhood Enghee Gaon. He asserts that the petitioner is a permanent resident of Village Mukhim Enghi Gaon in West Karbi Anglong. The petitioner was born and raised in the aforementioned village, where his ancestors and family have resided for a long time.

8. After hearing the submissions made by the learned counsels for both sides, I have examined the scanned copy of the case record along with the case diary. From the records, it is evident that the charge-sheet was submitted, listing the accused/petitioner as an absconder, and the learned Court below issued

summons on several occasions to expedite proceedings. However, the summons was returned un-served. Consequently, the learned Court below issued NBWA and P/A against accused petitioner No. 1. From the submissions made by the learned counsel for the petitioner, Mr. Singh, it is evident that the petitioner resides in Village Mukhim Enghi Gaon. However, at the time of the relevant incident, all summons, NBWA, and P/A were sent to the address mentioned in the FIR, i.e., Village Langhood Enghee Gaon. The accused/petitioner claims he never received any summons nor did the police inquire about him, as he did not reside in Village Langhood Enghee Gaon.

9. Considering the entirety of the case, the possibility of the non-receipt of summons cannot be outrightly rejected. Therefore, I direct the petitioner to appear before the learned Court below within 10 (ten) days from today and file a fresh petition for regular bail. Upon filing such a petition, the learned Court below shall consider and dispose of it in accordance with the law. Until then, the execution of NBWA and P/A issued against the petitioner shall be stayed/suspended, if applicable.

10. In terms of above, this anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant