

GAHC010119502024



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

Case No. : AB/1580/2024

ASIKUL HAQUE
S/O MD. SAMIRUDDIN @ CHAMIR UDDIN, A P/R/O BALIPARA JANGAL,
P.O.-PHOLIAMARI PATHAR, P.S.-BHURAGAON, PIN-782127, DIST-
MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

25.06.2024

Heard Mr. M. Biswas, learned counsel for the applicant and also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 438 Cr.P.C. is preferred by applicant, namely, Asikul Haque, who has been apprehending arrest in connection with Azara P.S. Case No.85/2024, under Section 407/379 IPC, for grant of pre-arrest bail.

3. It is to be noted here that the above noted case has been registered on the basis

of an FIR lodged by one Anurag Agarwal, on 13.04.2024. The essence of allegation made in the aforesaid FIR is that on 12.04.2024, at about 7:30 p.m., 200 packets of moong dal, 30 kg in each packet, 100 packets of chana dal, 30 kg in each packet, 500 packets of mosur dal, 30 kg in each packet, worth of ₹ 19,07,307/- and 100 packets of moong dal, 30 kg in each packet worth of ₹ 3,31,821/- were loaded in a Truck, bearing Registration No.NL-01K-1761, belonging to R.K. Transport, Azara driven by one Umad Ali, and the consignment was supposed to be delivered to Maya Product, Barpeta road. But, later on, he found the vehicle, along with the loaded articles, missing and also found the mobile phone of the driver switched off.

4. Mr. Biswas, learned counsel for the applicant submits that this is the 2nd pre-arrest bail application preferred by the applicant and the first application, being AB No.1205/2024 was dismissed by this Court after perusing the case diary. Mr. Biswas further submits that the ground for filing this 2nd pre-arrest bail application is that after dismissal of the first pre-arrest bail application, the investigation might have progressed significantly and that some of the co-accused have already been granted bail by this Court. Mr. Biswas further submits that the son of the applicant is suffering from ENT problem and he has been referred to Christian Medical College, Vellore and that he is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, has vehemently opposed the petition on the ground that the I.O. has collected sufficient incriminating materials against the applicant and some articles are yet to be recovered and that his custodial interrogation is necessary in the interest of investigation and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Lahkar, learned Additional P.P.

7. Admittedly, this is the second pre-arrest bail application. The case diary indicates

that the I.O. has collected sufficient incriminating materials against the present applicant. Investigation is still going on and some of the stolen articles are yet to be recovered. It is however a fact that some accused have been granted the privilege of bail. But, the same were granted considering their individual case and on the basis of materials collected during investigation against them.

8. Though Mr. Biswas referring to Annexure-10 at page 35 of the petition submits that the son of the applicant is suffering from ENT problem and he has been referred to Christian Medical College, Vellore, yet, there is no material to suggest that the said ailment is serious in nature requiring urgent medical attention.

9. Under the aforementioned facts and circumstances, this Court is of the view that the ground for filing this 2nd pre-arrest bail application is not at all satisfactory. It is to be noted here that in view of the ratio laid down by Hon'ble Supreme Court in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr.** reported in **(2004) 7 SCC 528**, second bail application is maintainable only on the ground of change of circumstance in favour of the accused. In the case in hand, the ground shown by the applicant is found to be not at all plausible.

10. Having considered above and also considering the nature and gravity of the offence, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant and accordingly, the petition stands dismissed. Case diary be returned.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant