

GAHC010128392024



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

Case No. : AB/1650/2024

ZINNATUL ALI
S/O SAFIKUL ALI ALI, R/O VILL- KACHARIBORI, P.S.-LAHARIGHAT, DIST-
MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

27.06.2024

- 1.** Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Ms. N. Das, learned Additional Public Prosecutor appearing for the State of Assam.
- 2.** This application under Section 438 of the Code of Criminal

Procedure, 1973 has been filed by the petitioner, namely, Zinnatul Ali, who is apprehending that he may be remanded to custody in connection with P.R.C. Case No. 189/2024, which is presently pending before the Court of learned Additional Chief Judicial Magistrate, Morigaon, if he appears before the said Court.

3. The learned counsel for the petitioner has submitted that in the aforesaid case, i.e. P.R.C. Case No. 189/2024, charge-sheet has been laid and the Court of learned Additional Chief Judicial Magistrate, Morigaon took cognizance of offence under Section 120(B)/419/420/465/468/471/326/270/313 of the Indian Penal Code, 1860 against eight accused persons, including the present petitioner.

4. It is submitted by the learned counsel for the petitioner that though the name of the present petitioner as an absconder in the charge-sheet, and though the learned Committal Court has issued summons to the present petitioner, however, as the cognizance of offence has also been taken, *inter alia* under Section 313 of the Indian Penal Code, 1860 for which the maximum punishment prescribed is life imprisonment and hence, he submits that for the Committal Court which is a Court of learned Additional Chief Judicial Magistrate, the embargo of Section 437 clause i sub-clause ii would be applicable and the Committal Court may not grant bail to him even if he appears in compliance to the summons received by him.

5. It is also submitted that under such circumstances, the Committal Court would be left with no other option, but to remand him to custody on his appearance.

6. The learned counsel for the petitioner has also submitted that the petitioner's name has been implicated in this case only because he happens to be nephew of one of the co-accused, namely, Md. Mainul Hoque.

7. The learned counsel for the petitioner has also submitted that in the meanwhile, two of the co-accused are already released on bail by this Court.

8. I have also heard Ms. N. Das, the learned Additional Public Prosecutor and has perused the documents annexed along with the anticipatory bail application. It appears that the P.R.C. Case No. 189/2024, is presently pending before the Court of learned Additional Chief Judicial Magistrate, Morigaon and said Court has already taken cognizance of various offences, including the offence under Section 313 of the Indian Penal Code, 1860, for which the maximum period of punishment life imprisonment and therefore, it appears that the submissions made by the learned counsel and the apprehension of the petitioner that he may be remanded to custody immediately, if he appears before the Committal Court, it appears to be genuine.

9. In view of above, this anticipatory bail application is disposed of with a direction that the petitioner shall appear before the Court of learned Additional Chief Judicial Magistrate, Morigaon on the next date fixed, i.e. 15.07.2024 and on such appearance, he shall be allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount, subject to the satisfaction of the learned Chief Judicial Magistrate, Morigaon with following conditions that:-

- (i) the petitioner shall co-operate in the investigation; and
- (ii) the petitioner shall not directly or indirectly make any inducement, threat or promise to the informant or to any other persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court.

10. With the above observations, this anticipatory bail application is hereby disposed of.

JUDGE

Comparing Assistant