

GAHC010128492024



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

Case No. : Bail Appln./1876/2024

RABUL SAIKIA
S/O DAMUDAR SAIKIA
R/O VILL- SEWALI PATH, HATIGAON
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. A K BHUYAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

16.07.2024

Heard Mr. A. K. Bhuyan, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor for the State respondent.

2. This application filed under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, who has been languishing in jail hazot since 15.06.2024 in connection with Morigaon P.S. Case No. 160/2024, registered under Sections 354/354(A)/354(D) of Indian Penal Code, 1860.

3. Mr. Parasar, learned Additional Public Prosecutor, submits that though the case was listed today for production of the Case Diary before this Court, but the I.O. has already filed Charge-Sheet in connection with this case.

4. In this regard, Mr. Bhuyan, learned counsel for the petitioner, has submitted that although the case has been charge-sheeted against the accused/petitioner, it is evident from the forwarding report and other documents that there has been non-compliance with Section 41/41-A of the Cr.P.C., which is mandatorily required to be followed as per the guidelines of the Apex Court in the case of ***Satender Kumar Antil vs. Central Bureau of Investigation & Anr., reported in (2022) 10 SCC 51***. In paragraph 100.3, it was held that "*the Courts will have to satisfy themselves on the compliance of Sections 41 and 41-A of the Code. Any non-compliance would entitle the accused for grant of bail*".

5. Citing the aforementioned judgment, he submits that there has been total non-compliance with Section 41/41-A of the Cr.P.C. The petitioner was arrested in connection with this case on 15.06.2024 and has been in custody for the past 31 days. Therefore, considering the length of detention undergone by the accused/petitioner and also considering the fact that the investigating officer (I.O.) has already submitted the charge-sheet, he may be granted bail. There is no likelihood of hampering or tampering with the investigation if bail is allowed. Moreover, he asserts that the petitioner is a respectable officer and the father of a grown-up daughter, and false and concocted allegations have been brought against him solely because he strictly ordered the informant to attend the office on time.

6. He further submitted that the learned Trial Court had rejected the prayer for bail vide order dated 15.06.2024, although in the said order had discussed about the non-compliance with Section 41 of the Cr.P.C. The Trial Court held that the non-issuance of notice under Section 41-A of the Cr.P.C. is not fatal in the present case. He further submitted that the Trial Court did not consider the observations made by the Hon'ble Supreme Court in the case of ***Satender Kumar Antil*** (*Supra*), where it was specifically held that non-compliance with Sections 41 and 41-A of the Cr.P.C. would entitle the accused to be granted bail.

7. In addition to his submission, Mr. Bhuyan, learned counsel for the petitioner, relies on the decision of the Co-Ordinate Bench in Bail Application No. 233/2024 dated 17.02.2024, where the Court granted bail due to non-compliance with Sections 41 and 41-A of the Cr.P.C.

8. On the other hand, Mr. Parasar, learned Additional Public Prosecutor, has submitted that the Case Diary has not been furnished by the IO due to the

submission of the charge-sheet. Accordingly, he submitted that it cannot be stated as to whether there was non-compliance with Sections 41 and 41-A of the Cr.P.C. He further submitted that the case has already been charge-sheeted, and therefore, the petitioner may be directed to appear before the Trial Court with a proper bail application, which shall be considered in accordance with the law.

9. After hearing the submissions of learned counsels for both sides, and upon perusal of the Case Record as well as the forwarding report, it is noted that the accused/petitioner was not served with a notice under Section 41/41-A of Cr.P.C. It is further observed that the FIR was lodged on 14.06.2024 and the accused/petitioner was arrested in connection with this case on 15.06.2024. Also, the Order passed by the Trial Court confirms that no notice complying with the provisions of Sections 41 and 41-A of Cr.P.C. was issued against the accused/petitioner, which is mandatorily required as the offence alleged to have committed by him is less than 7 years. The informant lodged the FIR and on the basis of the FIR, the accused had to be arrested promptly and from the ground of arrest it is seen that the I.O. found sufficient evidence against the accused/petitioner and he being an influential person there was possibility of hampering and tampering the investigation. However, as per the guidelines of the Apex Court in the case of ***Satender Kumar Antil*** (*Supra*), it has been held that a notice must be mandatorily furnished to the accused beforehand if the offence alleged carries a punishment of less than 7 years.

10. Thus, considering the entire facts and circumstances of the case, as well as the view expressed by the Apex Court in the case of ***Satender Kumar Antil*** (*Supra*), and taking into account that the case has already been charge-

sheeted, the nature and gravity of the offence, and the period of detention already undergone by the accused/petitioner, this Court is of the view that a *prima facie* case for granting bail to the accused person is established. The question of hampering and tampering with the investigation does not arise, as the Investigating Officer (IO) has already submitted the charge-sheet in connection with this case.

11. However, as the case has already been charge-sheeted, I do not find it proper to pass any order on bail and accordingly, the learned Trial Court shall pass the appropriate bail order considering the view of the Apex Court and the observation made by the Court in the event of filing any bail application by the petitioner.

12. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant