

GAHC010129882024



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

Case No. : AB/1723/2024

NADU SHEIK @ ASMOT ALI
S/O MATALEB ALI, R/O VILL- GADHUWA, P.S.-MANGALDAI, DIST-
DARRANG (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR M AHMED, A. K. KANU

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

31.07.2024

Heard Mr. M. Ahmed, learned counsel for the petitioner and also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam, appearing 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, namely, Nadu Sheik @ Asmot Ali, who is apprehending arrest in connection with Kalaigaon P.S. Case No.26/2022 under Section 366/376/34 of the Indian Penal Code.

3. Scanned copy of the case record along with the case diary has been received. Perused the same. Heard both sides.

4. It is submitted by Mr. Ahmed, learned counsel for the petitioner that the present petitioner is innocent and he is no way involved with the alleged offence. It is a fact that both the victim and the accused No.1 came to his house and he gave shelter to them to stay one night in his house. They left his house and thereafter, he is not aware about the lodging of any FIR in connection with the said incident. During the investigation, police never searched for him and hence, he is not aware about any pendency of any case against him in any police station. More so, the FIR is lodged under the Kalaigaon P.S. in Udalguri district, though the present petitioner is a resident of Darrang district and as such, he was not aware about the case. However, he is ready and willing to appear before the learned Trial Court below and will face the trial, if he is granted the privilege of pre-arrest bail.

5. Mr. B. Sarma, learned Additional Public Prosecutor, Assam, submitted in this regard that from the case record and the case diary, it is seen that there are sufficient incriminating materials against the present accused/petitioner also and he submitted that the FIR was lodged on 08.02.2022 for the incident which had happened on 06.02.2022 and the charge-sheet was filed on 28.02.2022. The learned Court below took cognizance of this case on 06.12.2022. Mr. Sarma further submitted that from the case diary, it is available that his house was searched during the investigation on 15.02.2022 and in other occasion also wherein he was found absconded and he could not be apprehended in connection with this case. Accordingly, it is seen from the record that the petitioner is absconding since 2022 and the learned Court below had issued summons on several

occasions and thereafter, considering his absence finally the learned Trial Court below had issued bailable warrant of arrest on 08.07.2024. Mr. Sarma, accordingly, submitted that considering the entire conduct of the accused/petitioner, who was absconding since 2022, his prayer for pre-arrest bail may not be considered. However, he may be directed to appear before the learned Trial Court below with an appropriate application for bail, which may be considered in accordance with law.

6. Hearing the submission made by the learned counsel for both sides, I have also perused the scanned copy of the case record along with the case diary and it is seen that some incriminating materials have already been collected by the I.O. and in the same time, it is seen that there was a house search for the present accused/petitioner, but he never cooperated in the investigation and was found absconding during the investigation. More so, even after filing of the charge-sheet and issuance of repeated summons, he is still absconding and the present petition has been filed after a long two years later praying for granting of the privilege of pre-arrest bail.

7. Considering the conduct of the accused/petitioner and the effort made by the learned Trial Court below, I do not find it to be a fit case to extend the privilege of pre-arrest bail to the present accused/petitioner. However, the present accused/petitioner is directed to appear before the learned Trial Court below with an appropriate application for bail, which may be considered in accordance with law.

8. With the above observation, the anticipatory bail application stands disposed of.

9. Case diary be returned.

Sd/- *Mitali Thakuria*
JUDGE

Comparing Assistant