

GAHC010132582024



2024:GAU-AS:11567

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

Case No. : AB/1711/2024

ANIL MALAKAR
S/O RATIRAM MALAKAR, RESIDENT OF NO. 1, KULHATI, PS HAJO, 781104

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MS. T SOM, MS. U HAZARIKA, MR H DAS

Advocate for the Respondent : PP, ASSAM, MR. A KHAN(INFORMANT)

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

25.11.2024

Heard learned Senior Counsel, Mr K N Choudhury, assisted by Ms T Som, learned counsel for the petitioner, Anil Malakar, who has filed this application under Section 438 of the Code of Criminal Procedure, 1973, with prayer for pre-arrest bail as he is apprehending arrest in connection with Hajo PS Case No. 55/2024, registered under Sections 341/326/325/379/34 of the Indian Penal Code, 1860.

2. Heard Mr D Das, learned Additional Public Prosecutor for the State respondent and

learned counsel, Mr A Chaudhury, learned counsel appearing on behalf of Mr A Khan, learned counsel for the informant.

3. The FIR unfolds that when the informant, Ghanashyam Malakar was proceeding to his farm, the petitioner as well as the other accused named in the FIR called him towards his land and tried to erect a post outside the boundary of his land. When the informant raised objection, Anil Malakar at the behest of other accused named in the FIR, dealt a blow on his head with an iron rod. Thereafter, Bipul Malakar assaulted causing injuries on his person. All the accused snatched his helmet and Rs. 3,000/- from his pocket and threatened him with dire consequences.

4. It is submitted on behalf of the petitioner that he is willing to cooperate with the investigation. He is entitled to bail as he has no criminal antecedents. The incident is an aftermath of a land dispute between both the parties. The informant is the aggressor and the petitioner is the victim as he is a peace loving citizen. Earlier, his petition with prayer for anticipatory bail was rejected by this Court.

5. Learned counsel, Mr A Choudhury has raised serious objection and has relied on the decision of this Court in connection with AB No. 1852/2022, wherein it has been observed by a coordinate Bench of this Court, vide order dated 05.08.2022, that a second bail application is not maintainable if the petitioner fails to demonstrate any change of circumstances, after his prayer for anticipatory bail has been rejected earlier.

6. Learned counsel for the petitioner has relied on the decision of this Court dated

10.11.2020, in connection with AB No. 3068/2020, wherein it has been observed that it is a settled principle that after rejection of an application for pre-arrest bail, there is scope to file a subsequent application for pre-arrest bail if there is change in the fact situation or in law, which requires the earlier view to be interfered with or whether the earlier view has become obsolete.

7. Learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in *Virupakshappa Gouda & Another -Vs- State of Karnataka & Another*; reported in (2017) 5 SCC 406, wherein it has been observed that-

“12. On a perusal of the order passed by the learned trial Judge, we find that he has been swayed by the factum that when a charge-sheet is filed it amounts to change of circumstance. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found materials, has placed the charge-sheet for trial of the accused persons. As is further demonstrable, the learned trial Judge has remained absolutely oblivious of the fact that the appellants had moved the special leave petition before this Court for grant of bail and the same was not entertained. Be it noted, the second bail application was filed before the Principal Sessions Judge after filing of the charge-sheet which was challenged in the High Court and that had travelled to this Court. These facts, unfortunately, have not been taken note of by the learned trial Judge. He has been swayed by the observations made in Siddharam Satlingappa Mhetre (supra),

especially in paragraph 86, the relevant part of which reads thus:-

“The courts considering the bail application should try to maintain fine balance between the societal interest vis-a-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court.”

8. It is also submitted by the learned Additional Public Prosecutor, Mr K Baishya that no change of circumstances on fresh ground has been projected by the petitioner to file a subsequent petition when his previous bail application was rejected.

9. It is submitted by the learned counsel for the informant and the learned Additional Public Prosecutor for the respondent State that Section 307 IPC has been added in connection with this case.

10. In reply, it is submitted by the learned Senior Counsel for the petitioner that the time mentioned in the FIR is 12:30 pm, whereas before the FIR was lodged, the injured person, Mr Ghanashyam Malakar, was forwarded for treatment at 10:39 am, on 19.02.2024, which is not plausible. Moreover, when a person has sustained 25 stitches on his head, it is not possible for a person to go to the Police Station and lodge the FIR.

11. I have considered the submissions at the Bar with circumspection.

12. I have also scrutinized the Trial Court Record.

13. The victim has sustained grievous injuries on his head, which is a vital part of his body. Statements of witnesses under Section 161 CrPC as well as Section 164 CrPC

have been recorded. Charge sheet has also been laid against the petitioner.

14. Considering all aspects, I deem it appropriate to direct the petitioner to appear before the Elaka Magistrate or before the jurisdictional Court and apply for bail, which may be considered by the Court as per merits of the case.

15. At this juncture, petition with prayer for anticipatory bail stands rejected.

JUDGE

Comparing Assistant