

GAHC010137622024



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

Case No. : Bail Appln./1997/2024

ALIM UDDIN AND ANR
S/O RAMJAN ALI, R/O VILL- SALMARA, P.O.-FAGUNA GAON, P.S.-
MANIKPUR, DIST- BONGAIGAON, ASSAM, PIN-783390

2: MAJED ALI
S/O RAMJAN ALI
R/O VILL- SALMARA
P.O.-FAGUNA GAON
P.S.-MANIKPUR
DIST- BONGAIGAON
ASSAM
PIN-78339

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 15.07.2024

Heard Mr. P. Mahanta, learned counsel for the petitioners. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 praying for grant of bail to the accused/petitioners, who have been arrested in connection with Sorbhog P.S. Case No. 38/2024, under Sections 365/392 of the Indian Penal Code (P.R.C. Case No. 1128/2024).

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. Mahanta, learned counsel for the petitioners, that the present accused/petitioners are innocent and no way connected in the alleged offence and being the hardworking unemployed youth, both the petitioners were earning their livelihood by operating a Bolero Vehicle, which was purchased by the petitioner No. 1 on hire basis from Mahindra Finance and the petitioner No. 2, who is the brother of petitioner No. 1, was engaged as driver of the said vehicle. It is further submitted that as per the request of one co-accused, Zakir Hussain, the accused/petitioner No. 2 carried him along with 2 (two) other persons from Salmara as he was known to the accused/petitioner No. 1. But, while they were proceeding towards Sorbhog, the driver and

handyman of one Tata Magic A/C Gold Truck was also boarded to the vehicle of the present petitioners and the accused/petitioner No. 2 was requested to carry them in their vehicle. However, they were arrested in connection with this case, along with the co-accused, Zakir Hussain and 5 others, in connection with Sorbhog P.S. Case No. 38/2024 with the allegation of kidnapping and dacoity, which was registered under Section 365/392 of the Indian Penal Code. Thus, it is submitted that the present accused/petitioners are no way connected with the alleged offence of kidnapping and dacoity even in the situation if the offence was committed by the other co-accused persons. He further submitted that the filing of the Charge-Sheet cannot be a valid ground for rejection of the bail prayer, rather the Court should consider the bail application after filing of the Charge-Sheet as investigation is already completed. He further submitted that while dealing with such a petition, the Court is to consider firstly that the investigation is completed, the custody of the accused is no longer required for investigation and secondly, trial when commenced may take time to complete and hence, it would cause injustice to the accused to keep him in jail for several years if subsequently the accused is found to be innocent. After the thorough investigation of this case, the I.O. has already filed the Charge-Sheet and hence, there is no chance of hampering or tampering of the evidences and there is also no chance of absconding of the accused/petitioner and they are the permanent resident of their addressed locality. In this regard, the learned counsel for the petitioner also relied on a decision of Apex Court passed in **Serious Fraud Investigation Office Vs. Nitting Johari [(2019) 5 SCC 266]** and submitted that once investigation is over and a Charge-Sheet has been filed, the nature of allegation may not be a factor to decide if bail is to be granted and instead, in such cases the Court must consider whether the

applicant has been co-operating in the investigation and whether there is a possibility that the applicant may abscond or tamper with the evidence and mere apprehension of tampering and or absconding is not enough to deny bail.

5. Mr. Mahanta, learned counsel for the petitioner, further submitted that it is a settled position of law that the bail can also be granted even after filing of the Charge-Sheet and in that context, he also relied on a decision of Apex Court passed in the case of **Sanjay Chandra Vs. C.B.I. [(2012) 1 SCC 40]**, wherein it has been held that custodial detention of a person may not be necessary for further investigation once the Charge-Sheet has been filed.

6. He further submitted that the wife of the accused/ petitioner is also seriously ill and considering the medical ground, their bail prayer may be considered. Further he submitted that there is no chance of absconding of the present accused/ petitioners as they are the permanent resident of their addressed locality. Rather, they will appear before the learned Trial Court below on each and every date fixed by the learned Court below.

7. In this context, Mr. Sharma, learned Additional Public Prosecutor, has submitted that there are sufficient incriminating materials against the present accused/petitioners and on the basis of which, the Charge-Sheet has already been filed and the Court also took cognizance against the present accused/ petitioners on 17.05.2024 under Sections 365/392 of the Indian Penal Code and the said Sections falls under serious offence. Further he submitted that in the present case, it is seen that the offence was committed in the Highway and as per the punishment prescribed under the said Sections, it may extended up to 14 years along with fine. Further he submitted that it is not a case that there is

a long delay in filing the Charge-Sheet, rather the Charge-Sheet is filed within the stipulated period and the cognizance has already been taken on 17.05.2024 and the case was fixed on 12.07.2024 and thus, there is probability of disposal of the matter within a short period. Mr. Sharma, learned Additional Public Prosecutor accordingly raised objection and submitted that it is not at all a fit case wherein the accused/ petitioners can be released on bail at this stage.

8. After considering the submissions made by the learned counsels for both sides, I have also perused the scanned copy of the case record, wherefrom it is seen that during the investigation, the I.O. has collected sufficient materials against the present accused/petitioners showing their involvement in the alleged offence and accordingly, the Charge-Sheet was filed against them. It is an admitted fact that the accused/petitioners are behind the bar since 27.03.2024, however it is seen that the Charge-Sheet was filed within the stipulated period and the cognizance is accordingly taken by the learned Court below vide order dated 17.05.2024. It is also a fact that the Charge-Sheet is filed by the I.O. after completion of the investigation. But, considering the nature of allegation alleged against the accused/ petitioners, it cannot be denied that there is a probability of hampering or tampering with the witnesses and in the same time, the probability of absconding also cannot be denied.

9. The Supreme Court in the case of **Kalayan Chandra Satkar Vs. Rajesh Ranjan Alias Pappu Yadav & Anr. [(2005) 2 SCC 42]** has expressed the view that the accused cannot be granted with bail solely on the ground that the accused had undergone incarceration for a period of three years and there was no likelihood of the trial being concluded in the near future. It was further held

that the sole ground of delay in conclusion of the trial without taking into consideration the allegation made by the prosecution in regard to the existence of *prima facie* case, gravity of the offence and the allegation of tampering with the witnesses by threat and inducement when on bail. In the case of **Rajesh Ranjan [(2004) 7 SCC 528]**, the Supreme Court has held that mere fact that the accused has undergone certain period of incarceration by itself would not entitle the accused to be enlarged on bail nor the fact that the trial is not likely to be concluded in the near future, either by itself or coupled with the period of incarceration would be sufficient for enlarging the accused on bail. It is also held that while considering the bail application, the Court must consider the nature of acquisition, the severity of the punishment in case of conviction, the nature of supporting evidence, reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant and *prima facie* satisfaction of the court in support of the charge.

10. Further, in the case of **Pramod Kumar Saxena vs. Union of India & Anr.**, the Supreme Court has held that mere long period of incarceration in jail would not be *per se* illegal. If the accused has committed offence, he has to remain behind bars. Such detention in jail even as an under trial prisoner would not be violative of Article 21 of the Constitution. In the case of **Prahlad Singh Bhati Vs. NCT, Delhi reported in (2001) 4 SCC 280**, the Supreme Court has culled out the principles, which the courts has to consider at the time of granting or refusing bail as under;-

"The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances

which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

11. In the instant case, it is seen that *prima facie* there is a case against the accused/petitioners and thus, considering the nature and gravity of the offence, it is the opinion of the Court that it is not a fit case to enlarge the accused/petitioners on bail only considering the period of incarceration and hence, the same stands rejected.

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

JUDGE

Comparing Assistant