

GAHC010139292024



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

Case No. : AB/1814/2024

SIKANDAR ALI
S/O- MUSLEMUDDIN,
VILL- JORIBOR,
P.O- PHALIHAMARI PATHER,
P.S- BHURAGAON,
DIST-MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : PHURINGDI NAIDING

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 19.07.2024

Heard Mr. K. Thakur, learned counsel for the petitioner and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. This application, under Section 482 of the B.N.S.S. has been preferred by

applicant, namely, Sikandar Ali who has been apprehending arrest in connection with Azara P.S. Case No. 85/2024 under Sections 407/379, IPC.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Anurag Agarwal on 13.04.2024. The essence of allegation made in the aforesaid FIR is that on 12.04.2024, at about 7:30 p.m., 200 packets of moong dal 30 kg in each packet, 100 packets of chana dal 30 kg in each packet, 500 packets of mosur dal 30 kg in each packet, worth of Rs. 19,07,307/- and 100 packets of moong dal 30 kg in each packet worth of Rs. 3,31,821/- were loaded in a Truck, bearing Registration No.NL-01K-1761, belonging to R.K. Transport, Azara driven by one Umad Ali, and the consignment was supposed to be delivered to Maya Product, Barpeta road. But, later on, he found the vehicle along with the loaded articles missing and also found the mobile phone of the driver switched off.

4. Mr. Thakur, learned counsel for the applicant submits that this is the second pre-arrest bail application filed by the application and the first one, being AB No. 1513/2024, was dismissed by this Court, vide order dated 13.06.2024, after perusing the case diary. Mr. Thakur further submits that the ground for filing the second application is that after registration of the FIR, the I.O. got sufficient time for investigation and in the meantime, the investigation might have been completed, and that in fact, 200 bags of stolen dal were received by his brother who was arrested here in this case and also granted bail by this Court, and that the applicant is ready to cooperate with the investigating agency and therefore, it is contended to allow the application.

5. On the other hand, Mr. P.S. Lahkar, learned Additional Public Prosecutor has produced the case diary before this Court and submits that investigation is still going on and the present applicant is absconding, and that investigation is

pending for his arrest. Mr. Lahkar further submits that the I.O. has collected sufficient incriminating materials, and therefore, Mr. Lahkar has opposed the application.

6. Having heard the submission of the learned Advocates of both sides, I have carefully gone through the application and the documents placed on record and also perused the case diary with the assistance of Mr. Lahkar, learned Additional Public Prosecutor.

7. Indisputably, this is the second pre-arrest bail application preferred by the applicant and the first one, being AB No. 1513/2024 was dismissed by this Court, vide order dated 13.06.2024. It is also well settled in a catena of decisions of Hon'ble Supreme Court specially in *State of T.N. vs. S.A. Raja*, reported in (2005) 8 SCC 380 and *Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and Another*, reported in (2004) 7 SCC 528, that second bail application is maintainable only in respect of change of circumstance in favour of the applicant/accused.

8. Here in this case, the learned counsel for the applicant has failed to show any change of circumstance in favour of the applicant. Though he has pointed out that the investigation, in the meantime, might have been completed as some of the accused persons have been arrested and enlarged on bail by this Court and he is also ready to cooperate with the investigating agency, yet the aforesaid circumstances appear to be not a change of circumstances in favour of the applicant.

9. It appears from the case diary that the I.O. has collected sufficient materials in support of the allegation made in the FIR and investigation is going on. It also appears that the applicant has been absconding since registration of the FIR.

10. Under the aforesaid facts and circumstances, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant and accordingly, this application stands dismissed.

11. Case diary be returned.

JUDGE

Comparing Assistant