

GAHC010144462024



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

Case No. : AB/1899/2024

SURAJIT DAS CHOUDHURY @ SUJIT DAS CHOUDHURY
S/O LT. JATINDRA DAS CHOUDHURY
R/O CHINCOORIE ROAD,
UPENDRA DHAM SARANI P.O. SILCHAR, P.S. SILCHAR,
DIST. CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. D GOGOI, MR. S BOIRAGI

Advocate for the Respondent : PP, ASSAM, MR. U CHOUDHURY(INFORMANT),MR. B M CHOUDHURY(INFORMANT)

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
O R D E R

08.08.2024

Heard Mr. S. Borthakur, learned counsel for the petitioner, namely, Suranjit Das Choudhury @ Sujit Das Choudhury, who has filed this application under

Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with prayer for pre-arrest bail, as he is apprehending arrest in connection with Silchar Police Station Case No.441/2024 under Sections 143/341/326/379/307 of Indian Penal Code, 1860.

2. Heard Mr. R.R. Kaushik, learned Additional Public Prosecutor, Assam for the respondent State and Mr. B.M. Choudhury, learned counsel for the informant.

3. The FIR unfolds that on 25.05.2024 at about 9.30 p.m. while Sushanta Kar was closing his foreign liquor shop namely "Rubi Wine Shop" at National Highway in Silchar, the accused named in the FIR, which also includes the petitioner, namely, Suranjit Das Choudhury @ Sujit Das Choudhury came to his shop and demanded alcohol but the informant refused to provide the same. Then, the petitioner along with his other associates assaulted the informant with broken bottles and rod and attempted to commit murder. The informant sustained injuries on his body and he had to undergo treatment at SMCH, Silchar. The petitioners also took away some cash and a gold chain at the time of the incident.

4. It is submitted on behalf of the petitioner that earlier this Court has rejected the anticipatory bail vide order dated 28.06.2024 passed in AB No.1562/2024. The petitioner has approached this Court on a new ground. It is submitted that on 25.05.2024, an FIR was lodged by Monika Das against the informant contending inter-alia that on 25.05.2024 at about 9.15 P.M. while she was returning from her maternal house at Sisu Mandir road, suddenly she was stopped by the informant Sushanta Kar @ Banty near this Rubi Wine Shop. The informant was also accompanied by four/five miscreants. Monika was terrified and she noticed that 40 to 50 people were drinking alcohol on the roadside. She raised alarm and then two/three elderly persons came to her rescue. She

somehow managed to escape and took refuge with the help of the President of Kaibarta Samaj and informed Sujit Das about the incident and asked for his help. It is submitted that Sushanta Kar's FIR was registered on 26.05.2024, whereas, Monika Das' FIR was registered on 25.05.2024. Sushanta Kar's FIR against the present petitioner is a counter FIR to screen himself from punishment. The allegation against the petitioner is absolutely false.

5. On the contrary, the learned counsel for the informant Mr. B.M. Choudhury, laid stress in his argument that earlier the FIR of Monika Das was also taken into consideration while dealing with the bail petition registered as AB No. 1562/2024, this cannot be considered to be a new ground. It has been held by the Hon'ble Supreme Court in ***MD. Shamim Khan Vs. The State of Jharkhand in Special Leave to Appeal (Crl.) No(s). 9449/2021***, vide order dated 16.12.2021, that:-

“The first application under Section 438 of the Cr.P.C. filed by the petitioner was rejected by the High Court by an order dated 10.11.2020. There was no substantial change of circumstances placed on record while filing the second application seeking pre-arrest bail under Section 438 of the Code and that came to be rejected by the High Court under the order impugned dated 02.08.2021.

Even before us, the learned Counsel for the petitioner is unable to show any change of circumstances to invoke the jurisdiction of filing second application under Section 438 of the Code before the High Court.

We deprecate such practice of filing second application under Section 438 of the Code after the first being rejected.

We have heard learned Counsel for the petitioner and find no reason to interfere in our jurisdiction under Article 136 of the Constitution.”

6. In the instant case also there was no charge of circumstances to consider this bail petition. To this, the learned counsel for the petitioner has

replied that the earlier petition no. AB 1562/2024 was rejected on 28.06.2024 and this petition has come up for hearing today. This is a ground, because the progress of investigation is a new ground to consider the bail petition.

7. The learned Addl. P.P. for the State respondent Mr. R.R. Kaushik, has raised serious objection stating that there are incriminating materials in the case diary against the petitioner.

8. I have scrutinized the case diary and I have also scrutinized the injury report of Sushanta Kar. He has sustained grievous injuries measuring 0.5cm X0.5cmX0.5cm over the left parietal bone region.

He has sustained simple injuries measuring 2cmX2cm over right side of frontal bone region. He has sustained swelling of size measuring 1cmX1cm over the right post-auricular area. The opinion of the doctor was that the weapon used was probably a dangerous weapon.

9. After scrutinizing the case diary, I am not inclined to grant pre-arrest bail to the petitioner. The petition stands rejected at this stage.

Send back the case diary.

JUDGE

Comparing Assistant