

GAHC010186702024



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

Case No. : AB/2429/2024

MUKUMONI BORAH
S/O SRI BHOLA NATH BORAH
R/O BARUAH TINIALI
P.O. JALONIDIBRUDOWAR,
P.S. DULIAJAN, DIST. DIBRUGARH, ASSAM
PIN-786602

VERSUS

THE STATE OF ASSAM,
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR B P BORAH, MR. A KHANDAKAR,MR. U S BORA,MR H MAZUMDER,MR P J DUTTA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

24.09.2024

Heard Mr. B.P. Borah, learned counsel for the applicant and also heard Mr. K.K. Das, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, is preferred by the applicant, namely, Mukumoni Borah, who has been apprehending arrest in connection with Duliajan P.S. Case No.317/2023, under Section 387/34 IPC and added Section 388 of the IPC, read with Section 25(1A) of the Arms Act, 1959, for grant of pre-arrest bail.
3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Aminul Haque on 10.12.2023.
4. The gist of allegation made in the aforesaid FIR is that on 09.12.2023, while he and his driver Ashraful Alam were carrying 8 nos. of cattle in a Mahindra G2 vehicle, bearing Registration No.AS-02CC-5553, then some youth, who were coming in a vehicle, bearing Registration No.3101, stopped their vehicle and assaulted them and taken to the field of Tripling School and there also assaulted them and demanded money. Then, he paid a sum of ₹ 26,000/- to them and they also threatened to kill them if they failed to make payment of money and then they have reported the matter to the owner of the cattle and then the owner of the cattle arrived there and then the youths threatened him also and thereafter, took away the cattle from the vehicle.
5. Mr. Borah, learned counsel for the applicant submits that this is the 2nd pre-arrest bail application preferred by the applicant and the first one was dismissed by this Court after perusing the case diary on 25.01.2024 in AB No.121/2024. Mr. Borah further submits that the ground for filing this 2nd pre-arrest bail application is that after dismissal of the first application on 25.01.2024, substantial period of time has elapsed and the I.O. got sufficient time for investigation and this is a change of circumstance in favour of the applicant. Secondly, Mr. Borah submits that though the case was registered under Section 25(1A) of the Arms Act, yet, the arms allegedly recovered from the possession of the accused, is not of prohibited bore and as such, Section 25(1A) is not applicable here in this case. Thirdly, Mr. Borah submits that though Section 388 IPC has been added later on, yet, no ingredients of the said offence is made out from a perusal of the FIR, where there is no indication about the involvement of the present applicant not to speak of using

of arms by him. Mr. Borah submits that custodial interrogation of the applicant here in this case may not be warranted and that in view of the decision of Hon'ble Supreme Court in the case of **Manish Sisodia v. Directorate of Enforcement**, reported in **2024 0 Supreme(SC) 645**, grant of bail is a rule and jail is an exception and under such circumstances, it is contended to allow the application.

6. On the other hand, Mr. K.K. Das, learned Additional Public Prosecutor, Assam, has vehemently opposed the petition. Producing the case diary before this Court, Mr. Das submits that though the name of the present applicant was not reflected in the FIR, yet, subsequently, he has been implicated by the informant and that his name was not reflected in the FIR, as the informant was not aware of the name of the present applicant and that not only the present applicant but also some other persons are also involved and to unearth the names of other co-accused, custodial interrogation of the present applicant is required and that the case is pending for that purpose only and therefore, Mr. Das has contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Das, learned Additional P.P.

8. It is a fact that the name of the present applicant is not there in the FIR and also there is no allegation of use of arms in the FIR. But, in the statements recorded under Section 161 as well as 164 Cr.P.C., the informant has clearly implicated the applicant with the offence alleged in the FIR. It is, however, a fact that the arms allegedly recovered from the possession of the accused is not of prohibited bore, but the allegations against the present applicant are serious in nature and some more accused are also involved with him and unless the present applicant is subjected to custodial interrogation, it would not be possible to unearth the names of the other co-accused persons.

9. Having considered above and also considering the nature and gravity of the offence and the punishment prescribed for the same, this Court is left unimpressed with the submission of Mr. Borah, learned counsel for the applicant that custodial interrogation of

the applicant is not required in the interest of investigation. His custodial interrogation is required for the purpose of unearthing the names of other co-accused persons.

10. I have carefully gone through the decision of Hon'ble Supreme Court in the case law referred by Mr. Borah, learned counsel for the applicant. There is no quarrel at the bar about the proposition of law laid down in the aforesaid case law. But, the said observation was made by Hon'ble Supreme Court in a case, where the accused was in custody for more than one year.

11. Under the given facts and circumstances of the present case, this Court is of the view that the proposition of law laid down in the aforementioned case would not advance the argument of Mr. Borah, learned counsel for the applicant. Thus, considering the nature of accusation and the punishment prescribed for the same and in the interest of investigation, this Court is of the view that the privilege of pre-arrest bail cannot be extended to the applicant and accordingly, the same stands dismissed.

12. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant