

GAHC010187532024



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

Case No. : Bail Appln./2736/2024

MITHILESH TIWARI
S/O LATE T.N. TIWARI, R/O 89/114/4DN BANERJEE ROAD, RISHRA HOOGLY-
712249, WEST BENGAL

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. B CHOUDHURY, MR M BHUYAN,MR. B GOGOI

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 11.09.2024

- 1)** Heard Mr. B. Boboi, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State of Assam.
- 2)** This application under Section 483 of the BNSS, 2023 has been filed by the petitioner Mithilesh Tiwari, who has been detained behind the bars since

01.07.2024 (for last 72 days) in connection with Halem P.S. Case No.46/2024 under Sections 120(B)/171E/379/406/420/468/471/413 of the Indian Penal Code.

3) The gist of accusation in this case is that on 1st of July, 2024, one Abhijit Roy, Director of New Manas Tea Estates Pvt. Ltd. had lodged an FIR before the Officer In-Charge of Halem Police Station against four accused persons including the present petitioner alleging commission of offence under Sections 120(B)/171E/379/406/420/468/471/413 of the Indian Penal Code.

4) The learned counsel for the petitioner has submitted that for all the above mentioned offences, the maximum period is more than 10 years. However he submits that, on 23.07.2024, an application made by the Investigating Officer to that effect that one co-accused, namely, Pankaj Tiwari, who is a habitual offender and has been involved in similar offences in other cases punishable under Section 413 of the IPC, contains a punishment of imprisonment up-to 10 years, which may be extend up-to life imprisonment. Hence the maximum period of statutory detention for the said offence is 90 days.

5) However, learned counsel for the petitioner has submitted that apparently Section 413 would be applicable only against the co-accused Pankaj Tiwari and it would not be applicable against the present petitioner Mithilesh Tiwari, who has been detained behind the bars for last 72 days i.e., 12 days more than a maximum statutory period of detention for which he could have been detained under Section 167 of the Cr.PC/187 of the BNSS.

6) On perusal of the record, it appears that the Section 413 of the IPC was added only because one of the co-accused, namely, Pankaj Tiwari, who is a habitual offender and there is no such allegation against the present petitioner.

7) Therefore, in the considered opinion of this Court, the present petitioner ought to have been released on completion of statutory period of 60 days.

8) In view of the reasons discussed above, the petitioner Mithilesh Tiwari is allowed to go on bail of Rs.30,000/-(Rupees Thirty thousand only) with one surety of like amount to the satisfaction of the learned SDJM, Gohpur, subject to the conditions that:-

- (i) the petitioner shall co-operate in the investigation.
- (ii) the petitioner shall not directly or indirectly make any inducement, threat or promise to the informant or to any other persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court; and

9) This bail application is accordingly disposed of.

JUDGE

Comparing Assistant