

GAHC010206882024



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

Case No. : Bail Appln./3018/2024

DR MAHMUD HUSSAIN
S/O-ALHAJ KERAMAT ALI,
VILLAGE- DAIRANG ROAD, KRISHNAI CHARIALI, KHAMAR MANIKPUR,
P.S- KRISHNAI,
DIST-GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY PP ASSAM

Advocate for the Petitioner : MR ASHRAFUL ISLAM, MR. S K M ALOMGIR, MR F HAQUE

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

11.11.2024

- 1.** Heard Mr. F. Haque, learned counsel for the petitioner. Also heard Mr. R.R. Kaushik, learned Additional Public Prosecutor appearing for the State of Assam.

2. This application under Section 483 of the BNSS, 2023 has been filed by the petitioner, namely, Dr. Mahmud Hussain, who has been detained behind the bars since 01.09.2024(for last 72 days) in connection with Lakhipur P.S. Case No. 221/2024 under Section 106(1)/125/90 of the BNS.

3. The gist of accusation in this case is that the Joint Director of Health Services, Goalpara on 08.08.2024 had lodged an FIR before the Officer-In-Charge of Goalpara Police Station against the present petitioner regarding the death of one Basaton Nessa during the procedure of medical termination of pregnancy conducted by the present petitioner on 15.07.2024.

4. The learned counsel for the petitioner has submitted that the petitioner is a registered Ayurvedic Practitioner and has performed his professional duty when the deceased had approached her for medical assistance.

5. He has also submitted that the petitioner has been detained behind the bars for more than 72 days and considering the period of detention, the petitioner may be allowed to go on bail.

6. On the other hand, learned Additional Public Prosecutor Mr. R.R. Kaushik has objected to the grant of bail on the ground that the medical termination of pregnancy was conducted by the present petitioner with the help of a cleaner at his residence which is against the professional ethics.

7. Learned Additional Public Prosecutor also submits that though

the case diary is updated upto 5th September, 2024, however, there are sufficient incriminating materials against the present petitioner in the case diary.

8. I have considered the submissions made by the learned counsel for the petitioner as well as learned Additional Public Prosecutor. Though on perusal of the case diary, it appears that the cause of death mentioned in the enquiry report conducted by SDM and H.O. attached to the Office of the Joint Director of Health Services, Goalpara has been mentioned as "Septic Shock, as a consequence of H/O D & E done by quack in shock", there are sufficient incriminating materials against the present petitioner in the case diary, however, considering the fact that the petitioner has been detained behind the bars for last 72 days, this Court is of considered opinion that his custodial detention may not be necessary for fair completion of investigation of this case.

9. Hence, the above-named petitioner is allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of learned Chief Judicial Magistrate, Goalpara, with following conditions that:-

- (i)** the petitioner shall co-operate in the investigation; and
- (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.

10. With the above observations, this bail application is hereby disposed of.

11. Send back the case diary.

JUDGE

Comparing Assistant