

GAHC010222362024



2024:GAU-AS:12326

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

Case No. : AB/2830/2024

ABDUL KALAM
S/O ABDUL AZIZ
VIL- KALBARI
P.S. SORBHOG
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. R ALI, MR H A AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

05.12.2024

1. Heard Mr. H.A. Ahmed, learned counsel for the petitioner. Also heard Mr. K.K. Das, learned Additional Public Prosecutor representing the State of Assam.

2. This application under Section 482 of BNSS, 2023 has been filed by the petitioner, namely, Abdul Kalam, who is apprehending his detention in connection with PRC Case No. 1420/2023(arising out of Sorbhog P.S. Case No. 31/2023) under Section 120(B)/147/341/326/302/435 of the Indian Penal Code, 1860.

3. The gist of accusation in this case is that on 15.02.2023, one Shariful Ali, had lodged an FIR before the Officer-in-Charge of Sarbhoj Police Station, *inter alia*, alleging that total 37 numbers of accused persons named in the FIR had assaulted the father and brother of the first informant and also damaged the properties including the bike of the brother of the first informant burning the same. It is also alleged that due to the assault the father of the first informant, namely, Hasmat Ali and the brother, namely, Saiful Ali were succumbed to the injuries later on. On receipt of the said FIR, Sarbhog P.S. Case No. 31/2023 was registered.

4. The learned counsel for the petitioner has submitted that the petitioner is an innocent person and is no way involved in the offence for which charge-sheet has been laid against him. He has submitted that the petitioner has not been named in the FIR and though charge-sheet has been laid against him as well 24 nos. of accused persons, no incriminating materials are there in the record against him. He has also submitted that in the charge-sheet, 10 accused persons are shown as absconder, which includes the present petitioner.

5. The learned counsel for the petitioner submits that though the Committal Court has issued summons to the present petitioner, however, as one of the offence involved in this case is under Section 302 of the Indian Penal

Code and the maximum punishment prescribed for the offence under Section 302 of the Indian Penal Code is death penalty. Hence, he apprehends that due to the embargo provided in Section 480(1)(i) of BNSS, 2023 the Committal Court, which is a Magistrate's Court may not grant bail to the present petitioner, even if he appears before the said Court in compliance to the summons received by him. He also submits that as the offence under Section 302 of the Indian Penal Code is involved, the case is triable exclusively by Court of Sessions and therefore, on his appearance, the Magistrate Court would remand him to custody under Section 232(a) of the BNSS, 2023.

6. The learned counsel for the petitioner has submitted that the petitioner has submitted that in the meanwhile, nine of the co-accused have already been granted anticipatory bail by this Court in A.B. Case No. 3674/2023, by order dated 29.11.2023.

7. The learned Additional Public Prosecutor, on the other hand, opposes the grant of anticipatory bail to the petitioner on the ground that he has been shown as an absconder in the charge-sheet. Moreover, the Committal Court has issued only summons to him, and therefore, there is no apprehension of getting arrested in this case.

8. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record, including the scanned copy of PRC Case No. 1420/2023.

9. The present petitioner was not named in the FIR, however, he has been shown as an absconder in the supplementary charge-sheet which was filed

by the Investigating Officer.

10. Though, it appears from record that only summons are issued to the present petitioner by the Committal Court, however, as one of the offence involved in this case is punishable with death penalty, therefore, the embargo of Section 480(1)(i) of the BNSS, 2023 may be applicable and Committal Court may not grant bail to the present petitioner even if he appears before the said Court, in pursuant to the summons issued by it.

11. Moreover, the present petitioner is willing to face trial and as some of the co-accused are already given benefit of order under Section 438 of the Code of Criminal Procedure, 1973, the grounds pleaded by the petitioner that he is apprehending that he may be detained on his appearance before the Committal Court, is not without any force. The custodial detention of the petitioner, in view of the facts and circumstances of the PRC Case No. 1420/2023, does not appears to be necessary, if he co-operates in the trial.

12. For the reasons mentioned hereinabove, the above-named petitioner is hereby directed to appear before the Committal Court on 24.12.2024, the date on which the PRC Case No. 1420/2023 is fixed for appearance. If he appears before the said Committal Court, as directed by this Court on the date fixed, he shall be allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand only) with one surety of like amount to the satisfaction of the Committal Court, i.e., the Court of the learned Additional Chief Judicial Magistrate, Barpeta, subject to the following conditions:-

1. That the petitioner shall cooperate in their trial;

2. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any of the enlisted witnesses/any other persons who may be acquainted with the facts of the case so as to dissuade such persons from deposing against the petitioners in the pending trial against them;

3. The Committal Court/Trial Court may add any additional condition of bail, if it deems fit to do so;

4. The petitioner shall not leave the jurisdiction of Trial Court without prior leave of the Trial Court.

13. With the above observation, this anticipatory bail application is disposed of.

JUDGE

Comparing Assistant