

GAHC010260702023



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

Case No. : AB/4011/2023

INAMUL SHEIKH @ EMAMUL SHEIKH@ ADU
S/O MUSLEM SHEIKH @ MUSLIM UDDIN
VILL- NOWAGAON, P.O. NOWAGAON
P.S. MANIKPUR
DIST. BONGAIGAON, ASSAM
PIN-783392

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 06.02.2024

Heard Mr. N. J. Dutta, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with P.R.C. Case No. 761/2023, under Sections 341/395/397/506 of the Indian Penal Code, arising out of Sorbhog P.S. Case No. 170/2022, under sections 341/397/506/395 of the Indian Penal Code.

3. Scanned copy of the LCR, along with the Case Diary, has already been received. I have perused the same and heard both sides.

4. Mr. Dutta, learned counsel for the petitioner, has submitted that the present petitioner was not aware about the pendency of this case and during the investigation only, his name was collected by the I.O. and the Charge-Sheet has been filed against him, along with the other accused persons, showing him as an absconder. From the other co-accused persons only, he came to know that the case has been Charge-Sheeted, though he was not aware about the pendency of this case. He further came to know that the summons were issued to the present accused persons along with others; however, till date, he has not received any summon from the learned Court below. It is further submitted by the learned counsel for the petitioner that from the scanned copy of the LCR, it is seen that there was no house search made by the police during the investigation of the case nor he was ever intimated or called by the police during the investigation of this case though the I.O. has made an statement in the Charge-Sheet that the present petitioner was evading police arrest and could not be arrested in connection with this case. He has an apprehension of being arrested in connection with this case as the case is still pending before

the learned Committal Court, which is not at all triable by the Court of Magistrate and therefore, till the appearance of the co-accused persons as well as the other absconder/Charge-Sheeted accused persons, the matter may not be committed to the learned Sessions Judge for trial. In that aspect, he also relied on a decision of Hon'ble Apex Court reported in **(2021) AIR(SC) 4154 (Aman Preet Singh Vs. C.B.I. through Director)**, wherein the Hon'ble Apex Court has expressed the view that if the custody of the accused was not required during the entire period of investigation, in such a scenario, it is appropriate to enlarge the accused on bail. The learned counsel mainly emphasized on paragraph Nos. 11, 13 & 14 of the said judgment, which reads as under:

"11. Insofar as the present case is concerned and the general principles under Section 170 Cr.P.C., the most apposite observations are in sub-para (v) WWW.LIVELAW.IN LL 2021 SC 416 8 of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this.

13. The given factual scenario completely fits the aforesaid as the appellant was never taken into custody during investigation. Suffice to say that it would be a fit case for the trial Court to grant bail to the appellant on the next date on terms and conditions to its satisfaction. As a measure of WWW.LIVELAW.IN LL 2021 SC 416 9 precaution, largely arising from the manner of submission of public prosecutor before the trial Court, it is made clear that the interim protection granted by this Court would continue till the appropriate order is passed by the trial Court.

14. In order to prevent situations of the kind which have arisen and repeatedly arise, it may be appropriate for the High Courts to circulate the judgments passed in Siddharth

vs. State of Uttar Pradesh & Anr.(supra) and passed today to the trial Courts as the problem appear to be endemic.”

5. The learned counsel for the petitioner further submitted that the accused, being a local person of his addressed locality, will appear before the learned Court below as well as before the learned Sessions Judge as and when his presence is required. He could not appear before the I.O. during the investigation of this case as he was never called for nor he was searched by the I.O., which is already reveals from the LCR.

6. In this context, Mr. Parasar, learned Additional Public Prosecutor, has submitted that the present accused/petitioner was one of the main accused involved in the alleged offence and there are sufficient materials collected by the I.O. during the investigation of this case. However, he submitted that there is no report of house search made by the I.O. during the investigation of this case, though it is reflected in the Charge-Sheet that he was absconding and evading police arrest during investigation.

7. Considering the submissions made by the learned counsels for both sides and also considering the fact that the accused was never searched by police during the investigation or never made any endeavour to arrest the present accused/petitioner during the investigation and further considering the view of Hon'ble Apex Court in the case of **Aman Preet Singh (supra)**, I find it appropriate to allow the accused to remain on pre-arrest bail till he appears before the learned Judicial Magistrate First Class, Barpeta.

8. Accordingly, the present accused/petitioner is hereby directed to appear before the learned Court below within a period of 15 (days) from today and file appropriate application for bail, which shall be considered by the learned Court below in accordance with law laid down by the Hon'ble Apex Court in the case of **Aman Preet Singh (supra)**.

9. Till then, the execution of NBWA will be stayed, if already issued.

10. In terms of above, this anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant