

GAHC010268732023



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

Case No. : AB/4101/2023

ANOWAR HOSSAIN KHAN @ ANOWAR HOSSAIN
S/O AZAHAR KHAN, R/O VILL-SATRAKANARA SEAT NO. 9, P.O.-
SATRAKANARA, P.S.-BAGHBAR, DIST-BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MD. S ALOM

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

08.02.2024

Heard Mr. S. Alom, learned counsel for the petitioner. Also heard Mr. D. Das, 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. 354/2020, arising out of Kachumara P.S. Case No. 98/2018, under Sections 448/341/366/511 of the Indian Penal Code.

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

4. Mr. Alom, learned counsel for the petitioner, has submitted that the present petitioner is innocent and his name has been falsely implicated in this case. He also submits that, as per allegation made in the FIR, offence under Section 366 of IPC does not attract and offences under Sections 341/448 of IPC are bailable. The I.O. has submitted the Charge-Sheet vide C.S. No.58/2018 dated 31.08.2018 under Sections 448/341/356/511 of IPC against the petitioner, showing him as an absconder. It is further submitted by the learned counsel for the petitioner 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 and hence, the present application has been filed seeking for Anticipatory Bail.

5. He also submits that, from the statement made by the witnesses, Section 366

does not attract against the present petitioner. Accordingly, he prays for extending the privilege of interim privilege bail and if the same is allowed, he is still ready and willing to appear before the learned Trial Court on each and every date fixed by the said Court. 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 appears to be endemic."

6. The learned counsel for the petitioner further submitted that the accused, being a local person of his addressed locality, will appear before the learned Trial Court 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 revealed from the LCR.

7. In this context, Mr. Das, learned Additional Public Prosecutor, has submitted that, the Charge-Sheet revealed that the accused/petitioner was absconding and evading police arrest during investigation. More so, from the statement of the witnesses recorded under Section 161 of Cr.P.C., it is seen that the present accused petitioner is very much involved in the alleged offence who tried to kidnap the victim. Accordingly, the learned Additional Public Prosecutor has raised objection in the prayer made by the learned counsel for the petitioner.

8. Considering the submissions made by the learned counsels for both sides as well as on perusing the LCR along with the charge-sheet, and also considering the fact that the accused was never searched by police during the investigation or never made any endeavor 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 Trial Court.

9. So, considering the entire circumstances of this case as well 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 Trial Court. Accordingly, in the event of arrest of the accused/petitioner, namely, Anowar Hossain Khan @ Anowar Hossain, in connection with Kachumara P.S. Case No. 98/2018, under Sections 448/341/366/511, he shall be enlarged on interim pre-arrest bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only.

10. 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)**.

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

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

JUDGE

Comparing Assistant