

GAHC010291212023



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

Case No. : AB/4357/2023

AJAY MALAKAR @ AJOY MALAKAR
S/O RUPENDRA MALAKAR,
R/O NAGAJANKA TEA STATE,
P.S.- MARIANI, DIST.- JORHAT, ASSAM, PIN- 785634.

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR B BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

19.01.2024

Heard Mr B Bora, learned counsel for the petitioner, Sri Ajay Malakar @ Ajoy Malakar.

2. The petitioner has filed this application under Section 438 CrPC, with prayer for pre-arrest bail, as he is apprehending arrest in connection with PRC Case No. 158/2022, under Sections 120(B)/177/200/505(1-b) of the Indian Penal Code, 1860, read with

Section 25 (1-A) of the Arms Act, 1959.

3. Heard Mr B B Gogoi, learned Additional Public Prosecutor for the State of Assam.

4. The FIR unfolds that in the morning of 09.10.2021, at about 10/11 pm, some miscreants near the Dimapur Railway Station, threatened Sri Sarat Das and looted Rs. 3,35,000/- and also snatched away his Pan-Card, Aadhar Card and his Voter ID Card. The miscreants also handed him a pistol with three rounds of live ammunition, which was disseminated by Sarat Das. Sarat Das was then taken into safe custody and his pistol with three rounds of live ammunition was seized. However, during investigation, it was unearthed that Sarat Das was in illegal possession of a pistol for a few months while he was in Dhakuakhana and he had given a false information to the OC of Dhakuakhana Police that the pistol was disseminated by him. Investigation commenced and finally, charge sheet was laid against Sarat Das and the present petitioner.

5. The present petitioner was shown as absconder.

6. The present petitioner is willing to cooperate with the trial.

7. It is also submitted that it is not clear from the statement of the witnesses, how charge sheet could be laid against the petitioner as his involvement have not been reflected by the witnesses, whose statements were recorded under Section 161 CrPC

8. The learned Additional Public Prosecutor has raised objection stating that charge sheet has been laid against the present petitioner as his involvement was *prima facie* found to be existent.

9. The petitioner has submitted that he may be forwarded to custody by the learned SDJM (M) at Dhakuakhana, as the offence under which the petitioner is booked is triable by the learned Sessions Judge.

10. The petitioner has relied on the order dated 29.11.2023, passed by this Court in connection with AB No. 3674/2023, wherein, the petitioners who were booked under Section 302 IPC were granted anticipatory bail and those petitioners were also shown as absconders in the charge sheet.

11. I have considered the submission that the petitioner is willing to cooperate with the trial.

12. I have also considered the submission that the petitioner being a local resident will not jump the bail.

13. Considering all aspects, the petitioner is directed to appear before the learned committal Court pursuant to the summons issued to him on 17.12.2023 and if he does appear before the learned committal Court, the petitioner shall be allowed to go on bail of Rs. 50,000/-, with a suitable surety of the like amount to the satisfaction of the learned SDJM (M), Dhakuakhana, under the following conditions that-

- i) the petitioner shall cooperate with the trial,
- ii) the petitioner shall not leave the jurisdiction of the learned trial Court without prior permission, till the completion of trial, and

- iii) the petitioner shall not exercise threats to the witnesses or tamper with the evidence.

On breach of any of the bail conditions, the bail order shall stand cancelled.

- 14. Bail Application stands disposed of.

JUDGE

Comparing Assistant