

GAHC010292392023



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

Case No. : AB/4361/2023

MOHABBAT HUSSAIN
S/O LATE ABUL KASHEM SK.
R/O BILASIPARA TOWN,
WARD NO. 4, SURJYAKHATA, P.O. AND P.S. BILASIPARA, DIST. DHUBRI,
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B HALDAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

19.01.2024

Heard Mr. B. Haldar, learned counsel for the applicant and Mr. R.J. Barua, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with the **Mankachar P.S. Case No. 322/2023**, under Sections 406/420/506 of the IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant namely, **Mohabbat Hussain** for grant of pre-arrest bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by one Md. Siraj Doula Ahmed, on 05.08.2023. The essence of allegation made in the FIR is that the informant has purchased one vehicle [Bus], bearing Registration No. AS-01-JC-9366, by fixing the price at Rs. 35,00,000/-, out of which the informant had paid an amount of Rs. 10,90,000/- and the remaining Rs. 24,10,000/- he had paid by way of monthly installments @ Rs. 75,000/- and he had paid all the installments in the bank account of Mohabbat Hussain and after payment of the said amount the applicant Mohabbat Hussain by deceitful means and fraudulently took a sum of Rs. 4,65,000/- more from him and that he requested the applicant to return the amount and to produce the clearance certificate from the concerned financier and to do the needful to transfer the ownership in the name of the informant. But, the applicant had demanded a sum of Rs. 10,00,000/- from him and also threatened to sell the vehicle to another person in the event of failing to meet his demand.

4. Mr. Haldar, learned counsel for the applicant submits that in view of the agreement dated 24.08.2019, which is annexed with the petition at Page No. 21, the entire amount has to be paid within a period of 32 months, but, the informant took about 46 months to pay the installments and in the meantime some additional amount of Rs. 10,51,745/- has accrued. Mr. Haldar further submits that as per clause 7 of the agreement dated 24.08.2019, the additional amount has to be paid by the second party i.e. the informant of this case. But, the informant has failed to make payment of the same and thereafter, he lodged the FIR. Mr. Haldar also submits that this is the second application and that the bank statement and some of the relevant documents could not be produced at the time of filing of the first application, being AB No. 3390/2023, and that the applicant is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, by producing the Case Diary before this Court, Mr. Barua, learned Additional Public Prosecutor submits that the IO has collected some

incriminating materials against the applicant and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the Case Diary produced before this Court, with the assistance of learned Additional Public Prosecutor.

7. It appears that after payment of 32 installments by the informant, there remains to be paid a sum of Rs. 10,51,745/- and the aforesaid amount has accrued on account of failing to make payment of the installments by the informant within 32 months. Further, it appears that the dispute appears to be the civil in nature and though the case has been registered under Sections 406/420/506 of the IPC, the factual ingredients, constituting the aforesaid offences, cannot be said to be made out here in this case and therefore, this Court is of the view that custodial interrogation of the applicant may not be required, in the interest of investigation.

8. Accordingly, it is provided that in the event of arrest of the applicant, in connection with the **Mankachar P.S. Case No. 322/2023**, under Sections 406/420/506 of the IPC, he shall be enlarged on pre-arrest bail, on his executing a bond of Rs. 50,000/- only, with one surety of like amount to the satisfaction of the arresting authority.

9. The above privilege is, however, subject to the following conditions:

(i) that the applicant shall make himself available for interrogation by the Investigating Officer as and when required;

(ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and

(iii) that the applicant shall not leave the jurisdiction of the learned **Chief Judicial Magistrate, South Salmara, Mankachar**, without prior permission.

10. Case diary be returned.

Comparing Assistant

JUDGE