

GAHC010295262023



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

Case No. : Bail Appln./4707/2023

BAHARUL ISLAM KHAN
S/O MUKLESUR RAHMAN KHAN
HOUSE NO. 3, MOROMI PATH,
P.O. HATIGAON,
P.S. HATIGAON
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR J ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 12.01.2024

Heard Mr. A. M. Bora, learned senior counsel assisted by Mr. B. P. Borah, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State.

This application under Section 439 of the Code of Criminal Procedure, 1973

has been filed by the petitioner, namely, *Baharul Islam Khan*, who has been shown arrested in connection with Crime Branch P.S. Case No. 09/2023 under Sections 120B/ 419/ 420/ 468/ 471/ 409 of the Indian Penal Code. On 20.12.2023, when he was under detention in connection with Crime Branch P.S. Case No. 08/2023 in which case he was earlier arrested on 15.12.2021.

The gist of accusation in this case is that one Chandan Das, Inspector of Crime Branch Police Station had lodged an FIR before the Deputy Commissioner of Police of Crime Branch, Guwahati, Assam, *inter alia*, alleging that during the investigation of Crime Branch P.S. Case No. 12/2023, a mutation order dated 17.08.2023 was found to be passed on the basis of a fake deed No. 4682/92 dated 31.12.92. It was further alleged that the said fake deed was prepared by an Advocate, namely, Mainul Hoque on being asked by one Ramen Modahi. It is also alleged that the original land owner of the said land, namely, Khagen Boro had not sold the said land to the Moriyom Bibi who has been shown as the purchaser in the said sale deed. It is also alleged in the said FIR that later on when the present petitioner raised a complaint against the mutation in the name of Moriyom Bibi, the name of Moriyom Bibi was cancelled on 05.10.2023 and later on, the mutation order was passed in favour of one Samir Choudhury by another mutation order dated 11.11.2023

Learned senior counsel for the petitioner has submitted that though the present petitioner has not been named in the said FIR as an accused, however, he has been shown arrested in the said case merely on the basis of suspicion. It is further submitted by learned senior counsel for the petitioner that the present petitioner is an Advocate and has been engaged as a counsel of one Samir Choudhury who had applied for mutation in connection with the land involved in this case and after conducting hearing in the mutation case filed by the Samir

Choudhury, the mutation order was passed in his favour on 11.11.2023.

The learned senior counsel for the petitioner has submitted that in the instant case there has been a serious violation of guidelines of the Apex Court in “**Uday Chand –Vs- Mohd. Abdullah, Chief Minister, J&K**” reported in “**1983 2 SCC 417**” whereby the Apex Court has deprecated the practice of withholding information from the Court about the requirement to arrest the accused in other case, which was in the knowledge of the State authorities where the said accused person may be required for custody.

The learned senior counsel for the petitioner has also submitted that considering the fact that the petitioner has been conducting his professional duties only and also considering the fact that he has been detained behind the bars for last 28 days, his further custodial detention may not be necessary, he may be allowed to go on bail.

On the other hand, the learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that there are materials in the case diary to indicate that Baharul Islam helped the accused Samir Choudhury to obtain favourable mutation order in connection with the land covered by Dag No. 626, Patta No. 464 by forging documents i.e., the sale deed which was executed in favour of Samir Choudhury.

I have considered the submission made by the learned counsel for both sides and have perused the material on record.

It appears from the record that the present petitioner was arrested on 15.12.2023 in connection with Crime Branch P.S. Case No. 08/2023 in which he has already been granted bail by this Court by order dated 12.01.2024 in Bail Application No. 4708/2023.

It also appears that the Investigating Officer has, in the meanwhile, recorded the statement of the present petitioner and the co-accused persons as well as the main witnesses and also considered the fact that the present petitioner has been detained behind the bars for 28 days, this Court is of the considered opinion that his further custodial detention does not appear to be necessary for fair completion of the investigation if he otherwise cooperates in the investigation of the said case.

In view of the above named petitioner shall be allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand) only with one suitable surety of like amount to the satisfaction of the Chief Judicial Magistrate, Kamrup(M), subject to the following conditions:-

- (i) That the petitioner shall cooperate in the investigation and shall appear before the Investigating Officer;
- (ii) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any other persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts before the Investigating Officer.

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

JUDGE

Comparing Assistant