

GAHC020005612023



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

Case No. : AB/34/2023

SAMSUL HOQUE
S/O ABUL HUSSAIN,
R/O BURIGAON VILLAGE (SUTARGAON),
P.O AND P.S DOBOKA,
DIST- HOJAI, ASSAM,
PIN-782440

VERSUS

THE STATE OF NAGALAND
KOHIMA NAGALAND

Advocate for the Petitioner : S ALAM

Advocate for the Respondent : P.P, NAGALAND

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

21.03.2024

Heard Mr. A. Sarma, learned counsel for the applicant and Mr. V. Zhimomi, learned Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with the **Medziphema (MEDZ) P.S. Case No. 18/2023**, under Section 379 of the IPC, this application under Section 438 of the Code of

Criminal Procedure, 1973, is preferred by applicant namely, **Samsul Hoque** for grant of pre-arrest bail.

3. The said case has been registered on the basis of one F.I.R. lodged by one Khotso Riirhia, on 30.05.2023. The essence of allegation made in the FIR is that on February, 2022 the informant has purchased one goods carrier vehicle, manufactured by TATA Motor Limited, bearing registration No. NL-07-AA-0123, with Engine No. B5.6B6A22OD06102H63837971 and Chassis No. MAT778003L2H03308, from Samsul Hoque, who is a resident of H.No.-65/A, Ward No.-4, Chumukedima Town, Dimapur, Nagaland. Thereafter, on 30.05.2023, at around 3/4 am, the said vehicle was stolen by some miscreants from the residents of informant's driver, near Chathe River, where they were sleeping.

4. Mr. Sarma, learned counsel for the applicant submits that the applicant is the registered owner of the vehicle and in support of his submission he has referred to Annexure – 2, at Page No. 13, which is a certificate of registration, which indicates that the name of the owner of the vehicle is Samsul Hoque. Mr. Sarma further referring to Annexure – 3, Page No. 14, which is an insurance certificate, submits that the same indicates that the vehicle is insured in the name of the present applicant. Mr. Sarma also referring to Annexure – 4, Page Nos. 17; 18; 19; and 20, submits that the present applicant has been paying EMI of the vehicle till 28.09.2023. Mr. Sarma has also referred to the additional affidavit filed by the applicant today, especially Annexure Nos. 1 & 2, submits that the same shows that the applicant has been paying EMI of the vehicle till 29.02.2024. Mr. Sarma further submits that the vehicle is still registered in the name of the present applicant and though that

the informant of this case is claiming that he had purchased the same on the strength of one sale deed (Annexure – 5, Page No. 25), yet, the same bears no signature of the present applicant and on the basis of the unsigned document the informant had falsely claimed that he is the owner of the vehicle. Mr. Sarma also submits that the informant has taken the vehicle from the applicant on hire and the condition of payment of EMI, but, he failed to make the payment and as such, the applicant has taken back the vehicle from the informant and therefore, the informant has lodged the present case falsely. Mr. Sarma also submits that the applicant is ready to cooperate with the investigating agency, but, he could not appear before the IO concerned, on earlier occasion though he was granted interim pre-arrest bail, as he is being threatened by the informant, for which he had lodged one complaint case before the Judicial Court at Hojai, Assam.

5. On the other hand, by producing the Case Diary before this Court, Mr. Zhimomi, learned Public Prosecutor fairly submits that the IO could not able to collect any materials in support of the allegation made in the FIR. However, Mr. Zhimomi submits that after recalling of the interim pre-arrest bail granted by this Court, the IO has approached the learned CJM, Dimapur for issuing Non-Bailable Warrant of Arrest (NBWA) against the present applicant and the learned court below has accordingly issued NBWA against the present applicant and therefore, Mr. Zhimomi has prayed for dismissing 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 Public Prosecutor.

7. It appears that the materials so far collected in the case diary are inadequate to show the complicity of the present applicant with the offence alleged in the FIR. Further, from the documents placed on record by the learned counsel for the applicant, it appears that the present applicant is the registered owner of the vehicle, who had taken back the vehicle from the informant, who hired the same, on account of failing to pay the EMI.

8. Having considered above and also considering the submissions of learned counsel of both sides, this Court is inclined to allow the application.

9. Accordingly, it is provided that in the event of arrest of the applicant, in connection with the **Medziphema (MEDZ) P.S. Case No. 18/2023**, under Section 379 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.

10. 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, Dimapur**, without prior permission.

- 11.** In terms of this AB stands disposed of.
- 12.** The case diary be returned.

Sd/-

JUDGE

Comparing Assistant