

GAHC010010512024



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

Case No. : Bail Appln./191/2024

BURHAN UDDIN AHMED
S/O ABDUL HANNAN
VILL- PODUMONI,
P.S. AND P.O. MURAJHAR
DIST. HOJAI
PIN-782439

VERSUS

THE STATE OF ASSAM
TO BE REP.BY THE PP, ASSAM

Advocate for the Petitioner : MR. R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

ORDER

02.02.2024

Heard Mr. T.J. Mahanta, learned Senior counsel assisted by Mr. R.A. Choudhury, learned counsel for the accused and also heard Mr. R.J. Baruah, learned Additional Public

Prosecutor, Assam, appearing for the State respondent.

2. This application, under section 439 Cr.P.C. is preferred by accused, namely, Burhan Uddin Ahmed, who has been languishing in jail hazot since 26.12.2023, in connection with Gorchuk P.S. Case No.11/2021, under Section 419/420/406/468/471/34 IPC, for grant of 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 Achyut Chandra Goswami on 04.01.2021. The essence of allegation made in the aforesaid FIR is that in the year 1992 the informant had purchased a plot of land measuring 1 bigha situated at Betkuchi village, Mouza-Beltola, covered by Dag No.196(o) and Patta No.1481(o) and Dag No.961(n) and 196(n) and he has paid land revenue regularly. But some unknown culprits have sold his land without his knowledge.

4. Mr. Mahanta, learned Senior counsel for the accused, submits that the accused was arrested on 26.12.2023 and since then, he has been languishing in jail hazot for last 38 days. Mr. Mahanta further submits that while causing arrest of the accused by the Investigating Officer, he has not complying with the provision of Section 41A Cr.P.C. and that the accused is ready to cooperate with the investigating agency and therefore, Mr. Mahanta contended to allow this petition.

5. On the other hand, Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, has produced the case diary before this Court and submits that the I.O. has collected incriminating materials against the present accused and therefore, Mr. Baruah has opposed the petition.

6. Having heard the submission of learned Advocates for both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Baruah, learned Additional P.P.

7. From the materials collected so far in the case diary and also from the forwarding report, it cannot be said that the I.O. has complied with the provision of Section 41A Cr.P.C. and in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.** reported in **2022 LiveLaw (SC) 577**, Hon'ble Supreme Court has held that in view of non-compliance of the aforesaid provision, the accused is entitled

to bail. Further, it appears from the case diary that the I.O. has achieved some progress in the investigation of the case. The accused is behind the bar for last 38 days and considering the nature and gravity of the offence and also the period of detention and further considering the fact that the I.O. has not complied with the provision of Section 41A Cr.P.C., this Court is inclined to allow this petition. Accordingly, it is provided that on furnishing a bond of ₹ 50,000/- with one surety of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup(M), the accused, namely, Burhan Uddin Ahmed, be enlarged on bail. Case diary be returned.

8. In terms of above, this bail application stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant