

GAHC010051532024



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

Case No. : AB/701/2024

MD. HAREJ ALI
S/O LATE KAFILUDDIN, R/O VILL- MAGHULI BARGOLA, P.S.-NORTH
LAKHIMPUR, DIST- LAKHIMPUR (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : F K R AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

10.06.2024

Heard Mr F K R Ahmed, learned counsel for the petitioners, Md Harej Ali, who has filed this application under Section 438 of the Code of Criminal Procedure, 1973, with prayer for pre-arrest bail, as he is apprehending arrest in connection with PRC Case No. 1037/2023, pending in the committal Court of SDJM(S), Lakhimpur, North Lakhimpur, arising out of North Lakhimpur PS Case No. 644/2022, under Sections 294/326/307/34 of the Indian Penal Code, 1860.

2. Heard Ms N Das, learned Additional Public Prosecutor for the State of Assam/respondent.

3. It is submitted that the petitioner is willing to appear before the Court and cooperate with the trial, but he is apprehending arrest as he has to appear before the Magistrate and this is a sessions triable case and he may be forwarded to custody.

4. The scanned copies of the Trial Court Record reveals that petitioner was shown as absconder when the charge sheet was submitted against him under Sections 294/326/307 IPC.

5. The allegation against the petitioner is that he along with the co-accused named in the FIR assaulted Hasen Banu and Md Suruj Ali with sharp weapons causing grievous injuries.

6. It is submitted by the learned counsel for the petitioner that the petitioner is willing to appear before the Court and prove his innocence.

7. It is submitted that the Police never went in search of the petitioner and he was not aware that a case was being investigated against him. On receipt of summons, the petitioner learnt about this case against him.

8. The learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in ***Mahdoom Bava –Vs- Central Bureau of Investigation***, rendered in connection with SLP(Crl.) No. 376/2023, dated 20.03.2023, wherein it has been held and observed that-

“10. More importantly, the appellants apprehend arrest, not at the behest of the CBI but at the behest of the Trial Court. This is for the reason that in some parts of the country, there seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order. The correctness of such a practice has to be tested in an appropriate case. Suffice for the present to note that it is not the CBI which is seeking their custody, but the appellants apprehend that they may be remanded to custody by the Trial Court and this is why they seek protection. We must keep this in mind while deciding the fate of these appeals.

11. In the case of the prime accused, namely Shri Mahdoom Bava, an additional argument advanced by the learned Additional Solicitor General is that he was involved in eleven other cases. But the tabulation of those eleven cases would show that seven out of those eleven cases are complaints under Section 138 of the Negotiable Instruments Act, 1881 and three out of those seven cases are actually inter-parties and not at the instance of the Bank. The eighth case is a complaint filed by the Income Tax Officer and it relates to the non-payment of TDS amount. The remaining three cases are the cases filed by CBI, one of which is the subject matter out of which the above appeals arise.

12. In view of the aforesaid, we are of the considered view that the appellants are entitled to be released on bail, in the event of the Court choosing to remand them to custody, when they appear in response to the summoning order. Therefore, the appeals are allowed and the appellants are directed to be released on bail, in the event of their arrest, subject to such terms and conditions as may be imposed by the Special Court, including the condition for the surrender of the passport, if any”

9. It is also submitted by the learned counsel for the petitioner that a direction may be

given to the jurisdictional Court to consider the bail petition of the petitioner, as per the direction of Hon'ble the Supreme Court in *Aman Preet Singh –Vs- Central Bureau of Investigation*; reported in **2021 SCC OnLine SC 941.**

10. I have considered the submissions at the Bar with circumspection.
11. The petitioner is directed to appear before the SDJM (S), Lakhimpur, North Lakhimpur, within 15 days and apply for bail, which may be considered by the Court, as per law.
12. Till then, no coercive action to be taken.
13. With the aforesaid observations and directions, this Anticipatory Bail Application stands disposed of.

JUDGE

Comparing Assistant