

GAHC010045342024



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

Case No. : Bail Appln./604/2024

WASIR AHMED
S/O SOHRAB UDDIN AHMED
R/O ROWMARI, WARD NO. 1,
P.O. AND P.S. ABHAYAPURI
PIN-783384
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. S A HUSSAIN

Advocate for the Respondent : PP, ASSAM

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

ORDER

11.03.2024

Heard Mr. D.J. Haloi, learned counsel for the accused and also heard Mr. P.S.

Lahkar, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 439 Cr.P.C. is preferred by accused, namely, Washir Ahmed, who has been languishing in jail hazot since 18.02.2024, in connection with Abhayapuri P.S. Case No.55/2024, under Section 120B/420/406/384 IPC, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Debajit Arya, on 16.02.2024. The essence of allegation made in the aforesaid FIR is that one Washir Ahmed has been running money lending business for a long time and he used to extort money from the poor people in the name of the said business and he enters into the houses of the people at night to collect interest and extort money by threatening them and one young businessman from Bowalimari committed suicide three years back on account of physical and mental torture subjected to him by the accused and he used to extort 20% to 30% interest from the poor people by claiming that he has a licence to collect interest.

4. Mr. Haloi, learned counsel for the accused submits that the accused was arrested on 18.02.2024 and since then he has been languishing in jail hazot for last 22 days. Mr. Haloi further submits that while causing arrest of the accused, the I.O. has failed to comply with the provision of Section 41A Cr.P.C. and on account of failing to comply with the same, the accused is entitled to bail, in view of the judgment of Hon'ble Supreme Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation & Anr.** reported in **(2022) 10 SCC 51**, and that the I.O. has already completed investigation and submitted charge-sheet and the accused is ready to face trial and therefore, it is contended to allow this petition.

5. On the other hand, Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, submits that he has not received the case diary, but as per his instruction, the I.O. has completed investigation and submitted charge-sheet, being Charge-Sheet No.55/2024, dated 29.02.2024, under Section 384 IPC, read with Section 12 of the Assam Money

Lenders Act. Mr. Lahkar further submits that the I.O. has complied with the provision of Section 41 of the Cr.P.C. while causing arrest of the accused and vide order dated 07.03.2024. It is to be noted here that the accused has filed one additional affidavit stating that the I.O. has not complied with the Section 41A Cr.P.C.

6. Thus the learned Additional P.P. Mr. Lahkar was directed to obtain instruction from the I.O. concerned, as to whether Section 41A Cr.P.C. was not complied with or not at the time of causing arrest of the present accused and accordingly, Mr. Lahkar, obtaining necessary instruction, submits that said Section was not complied with.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record.

8. It is to be noted here that in the case of **Satender Kumar Antil** (supra), Hon'ble Supreme Court in paragraph 100.3 stated that the Court will have to satisfy themselves on the compliance of Section 41 and Section 41A of the Code. Any non-compliance would entitle the accused for grant of bail.

9. In the case in hand, admittedly, the aforesaid provision has not been complied with. Though Mr. Lahkar, learned Additional P.P. submits that service of notice under Section 41A Cr.P.C. is not required as the I.O. has intended to cause arrest of the accused, yet the said submission left this Court unimpressed, in view of the fact that in no uncertain time, the Hon'ble Supreme Court in **Satender Kumar Antil** (supra) in paragraph 100.3 stated that any non-compliance would entitle the accused for grant of bail.

10. Besides, it appears that the I.O. has already completed investigation and submitted charge-sheet. Now trial will start and the accused has also to prepare his defence. Under the aforesaid facts and circumstances, further custodial detention of the accused seems to be not warranted here in this case and therefore, this Court is inclined to allow this

petition.

11. It is provided that on furnishing a bond of ₹ 50,000/- with one surety of the like amount to the satisfaction of the learned S.D.J.M.(M), North Salmara, Abhayapuri, the accused, namely, Washir Ahmed, be enlarged on bail.

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

**Sd/- Robin Phukan
JUDGE**

Comparing Assistant