

GAHC010049092024



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

Case No. : Bail Appln./700/2024

MD. RIAJUL ISLAM @ RIYAJUL ISLAM
S/O-NAUSAD ALI ALIAS NOCHAD ALI, R/O- VILL PACHIM MAHAKULI, P.O-
NAUBAISHA, P.SLALUK, DIST- LAKHIMPUR, ASSAM, PIN- 787023.

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M KALITA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

11.03.2024

Heard Mr. M. Kalita, learned counsel for the accused and also heard Ms. S. Jahan, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 439 Cr.P.C. is preferred by accused, namely, Md.

Riajul Islam @ Riyajul Islam, who has been languishing in jail hazot since 22.02.2024, in connection with Agia P.S. Case No.16/2024, under Section 420/406/34 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 S.I. Rupjyoti Kalita, on 21.02.2024. The essence of allegation made in the aforesaid FIR is that in connection with Agia P.S. G.D. Entry No.008, dated 21.02.2024, the informant along with staff proceeded to Chandmari area and apprehended one Riajul Islam, who was in the custody of the local people with one boat of suspected gold, weighing 1181 gm and seized the same in presence of witnesses and also apprehended another person, namely, Avdesh Kumar Ahirwar and recovered ₹ 16,500/- from him and during interrogation, they reveals that one Fuluddin Sheikh is also involved with them in the business of fake gold and thereafter, he had conducted search in his house and recovered one school bag with ₹ 7,390/- and seized the same in presence of witnesses.

4. Mr. Kalita, learned counsel for the accused submits that the accused was arrested on 21.02.2024 and since then he has been languishing in jail hazot. Referring to the forwarding report at page-14, Annexure-2 of the petition, Mr. Kalita submits that while causing arrest of the accused, the I.O. has not complied with the provision of Section 41A Cr.P.C., compliance of which is mandatory 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 therefore, Mr. Kalita submits that the accused may be enlarged on bail.

5. On the other hand, Ms. S. Jahan, learned Additional Public Prosecutor, Assam, also submits that Section 41A Cr.P.C. has not been complied with on the ground that the accused is a non-local person and that he may not cooperate with the investigation and that the ground assigned by the I.O. for non-compliance of Section 41A Cr.P.C. is not at all tenable.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record.
7. It is to be noted here that in the case of **Satender Kumar Antil** (supra), Hon'ble Supreme Court has held that while causing arrest of the accused, Section 41A Cr.P.C. notice has to be served upon the accused and non-compliance of the same will be a ground for enlarging the accused on bail. In the case in hand also, admittedly, the provision of Section 41A Cr.P.C. has not been complied with. Therefore, this Court is inclined to allow this petition.
8. It is provided that on furnishing a bond of Rs.50,000/- with one surety of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Goalpara, the accused, namely, Md. Riajul Islam @ Riyajul Islam, be enlarged on bail.
9. In terms of above, this bail application stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant