

GAHC010016512024



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

Case No. : AB/228/2024

BASIRE AHMED
S/O- MATIUR RAHMAN, 75 JAMUNAMUKH 193 JUGIJAN, NEAR BANGSORY
JAMI MASJID, HOJAI, P.S. HOJAI, DISTRICT- HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY PP ASSAM

Advocate for the Petitioner : MR S HOQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 02-02-2024

Heard Mr. S.H. Sikdar, learned counsel for the petitioner Basire Ahmed and Ms. B. Bhuyan, learned Additional Public Prosecutor for the respondent State of Assam.

2. The petitioner has filed this application under Section 438 of the Code of Criminal Procedure, 1973 (CrPC for short) in connection with Cyber Crime Police Station FIR/Case No. 271/2023 under Sections 420 Indian Penal Code (IPC for short) and Section 66D of the IT(A) Act, 2008 registered at Central Crime Branch, Cyber Crime Police Station, Vepery, Chennai Police.

3. I have considered the submissions at the bar.

4. It is submitted that the notice under Section 41(A) of the CrPC dated 18.12.2023 was sent to the petitioner in connection with Cyber Police Station FIR/Case No. 271/2023 and petitioner received the notice under Section 41(A) of the CrPC on 05.01.2024. Thus the petitioner could not appear before the concerned Police Station on 02.01.2024. The petitioner is apprehending arrest in connection with this case at any point of time. He has prayed for pre-arrest bail. It is submitted that the petitioner is unaware of the offence as he is innocent. The petitioner has never visited Chennai at any point of time. He takes care of his parents and his father is around 65 (Sixty Five) years of age and is suffering from serious ailment. The petitioner is willing to appear before the concerned Police Station in connection with the instant case. He is willing to file for anticipatory bail before the jurisdictional High Court. The petitioner is willing to proceed to Chennai and obtain certified copies of the instant case. The petitioner is also willing to abide by any conditions to be imposed upon him. The petitioner has relied on the decision of Hon'ble the Supreme Court in Priya Indoria Vs. State of Karnataka reported in (2023) O Supreme (SC) 1164 wherein it has been observed that:

“45. At the same time, we are also mindful of the fact that the accused cannot seek full-fledged anticipatory bail in a State where he is a resident when the FIR has been registered in a different State. However, in view of what we have discussed above, he would be entitled to seek

a transit anticipatory bail from the Court of Session or High Court in the State where he is a resident which necessarily has to be of a limited duration so as to seek regular anticipatory bail from the Court of competent jurisdiction. The need for such a provision is to secure the liberty of the individual concerned. Since anticipatory bail as well as transit anticipatory bail are intrinsically linked to personal liberty under Article 21 of the Constitution of India and since we have extended the concept of access to justice to such a situation and bearing in mind Article 14 thereof it would be necessary to give a constitutional imprimatur to the evolving provision of transit anticipatory bail. Otherwise, in a deserving case, there is likelihood of denial of personal liberty as well as access to justice for, by the time the person concerned approaches the Court of competent jurisdiction to seek anticipatory bail, it may well be too late as he may be arrested. Needless to say, the Court granting transit anticipatory bail would obviously examine the degree and seriousness of the apprehension expressed by the person who seeks transit anticipatory bail; while the object underlying exercise of such jurisdiction is to thwart arbitrary police action and to protect personal liberty besides providing immediate access to justice though within a limited conspectus.”

5. I have considered the submissions of the petitioner that he is not aware of the nature of the case under which he is booked. It appears that the offence alleged is related to an incident of cyber crime. It is also submitted that the petitioner is willing to appear before the jurisdictional Police Station in Chennai. In the light of the decision of Hon'ble the Supreme Court in Priya Indoria's case (supra), I deem it proper to grant 15 (Fifteen) days for the petitioner to appear before the jurisdictional High Court.

In the above terms this Anticipatory Bail application stands disposed of.

JUDGE

Comparing Assistant