

GAHC010057062022



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

Case No. : AB/839/2022

ABDUL AZIZ TAPADAR
S/O- LATE ASHAID ALI TAPADAR, R/O- VILL.- MOBARAKPUR, P.O.
SICLHAR ROAD, P.S. AND DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MR. JUSTICE ROBIN PHUKAN

30-09-2022

Heard Mr. A.B.T. Haque, learned counsel for the applicant. Also heard Mr. D.Das, learned Additional Public Prosecutor for the State Respondent and Mr. A.K. Talukdar, learned counsel for the informant.

This application under Section 438 of the Code of Criminal Procedure has been preferred by Abdul Aziz Tapadar for granting pre-arrest bail, who has been apprehending arrest in connection with Karimganj P.S. Case No.127/2022, under Section 420/468/506 of the Indian Penal Code.

The said case has been registered on the basis of an FIR lodged by

one Azibur Rahman Choudhury on 17.2.2022, alleging that Abdul Aziz Tapadar sold a plot of land to him suppressing the fact that the land, bearing Dag No.146, 147 of Patta No.229, 208 has already been mortgaged with the Bank and he came to know about the same when the Bank has served a notice to him under the SARFAESI Act.

Mr. ABT Hoque, learned counsel for the applicant submits that pursuant to the order of this Court dated 25.04.2022, the applicant had appeared before the Investigating Officer and he has been cooperating with the investigating agency and that a civil suit is also pending between the parties and, therefore, it is contended that the interim order dated 25.04.2022 be made absolute on the same terms and conditions.

On the other hand, Mr. D. Das, learned Additional Public Prosecutor, producing the case diary before this Court, and referring to the letter of the Investigating Officer for cancellation of the interim bail granted to the applicant, submits that there is strong possibility of destroying the evidence in the event of making the interim bail absolute and that some of the documents relating to the mortgage of the said plot of land is yet to be seized and that the applicant is an influential person and he may hamper and temper the evidence and, therefore, contended to dismiss the petition.

Per contra, Mr. A.K. Talukdar, learned counsel for the informant submits that the informant has filed one affidavit objecting the anticipatory bail application filed by the applicant on the ground that in the event of making the interim bail absolute, then the accused and his son may kill him and his wife and he may be forced to withdraw the present case and, in the event of making the interim bail absolute, they

may threaten the witness not to adduce evidence against him and that they asked for mutual settlement of the matter and after granting of interim bail, they refused to enter into any negotiation to that effect. Mr, Talukdar, learned counsel for the informant further submits that after getting the interim protection from this Court, the applicant has started threatening him and he had filed one case before the O/C Karimganj Police Station upon which Karimganj P.S. Non FIR Case No.173/2022, under Section 106/166 Cr.P.C. has been registered against the applicant and, therefore, Mr. Talukdar, learned counsel has vehemently opposed making of the interim order dated 25.04.2022 absolute.

In reply to the above submission of Mr. Talukdar, learned counsel, Mr. A.B.T. Hoque, leaned counsel for the applicant has submits that the accused is a heart patient and he has been undergoing treatment at Chennai and he had never threatened the informant and a false case has been filed only to get the interim protection extended to the applicant by this Court, cancelled.

Having heard the learned counsel for both the sides, I have carefully gone through the petition and the documents placed on record and also perused the objection filed by the informant and also by the I/O and also the affidavit submitted by the applicant.

It appears that the applicant was granted interim protection by this Court vide order dated 25.4.2022 and, thereafter, the informant has lodged a complaint against the applicant before the Court of District Magistrate, Karimganj under Section 107/116 of the Cr.P.C. and based upon the same Karimganj P.S. Non FIR Case No.173/2022 under Section 106/166 Cr.P.C. has been registered and a report has been submitted to

the Additional District Magistrate, Karimganj. It appears from the objection filed by the Investigating Officer that if the interim bail is made absolute, there is possibility of destroying the evidence which are yet to be collected and also that some of the documents are yet to be seized and that the applicant is a very influential person and may hamper or temper the evidence. It also appears from the Case Diary that the I/O has collected sufficient materials against the applicant and the investigation is still going on and it appears from the affidavit submitted by the informant and also from the statement of the learned counsel for the informant that the liberty granted to him by this Court vide order dated 25.04.2022, appears to be misused by him.

In the above facts and circumstances of the case, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be extended to the applicant.

Accordingly, this anticipatory bail application is dismissed.

The interim pre-arrest bail granted vide order dated 25.04.2022 stands vacated.

Case diary be returned.

JUDGE

Comparing Assistant