

GAHC010048082021



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

**Case No. : Crl.Pet./173/2021**

MOINUL HOQUE  
S/O HAJI JAHANUDDIN, VILL-CHOTOPATAKATA, P.S.-SOUTH SALMARA,  
DIST-SOUTH SALMARA-MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

**Advocate for the Petitioner : MR A ISLAM**

**Advocate for the Respondent : PP, ASSAM**

**B E F O R E**  
**HON'BLE MR. JUSTICE HITESH KUMAR SARMA**

16-03-2021

Heard Mr. A. Islam, learned counsel for the petitioner. Also heard Mr. N.K. Kalita, learned Additional Public Prosecutor, Assam, appearing for the State Respondent.

This is an application under Section 482 of the Code of Criminal Procedure seeking setting aside of the order dated 2.3.2021 passed in B.A. No.95 of 2021 by the Additional Sessions Judge No.3, Kamrup (M) granting bail to the petitioner with a direction to furnish two sureties, one of which must be at-least Grade-III Government Servant.

I have perused the petition and the annexures furnished therewith including the impugned order. On perusal of the impugned order, it is found imperative to quote para-4 of the order for a just decision of the instant petition, which reads as under :

“ ***I have perused the case diary and heard Ld. Counsel for the accused person.***

***Upon perusal of the case diary and considering the submission made by Addl. P.P., I find it prudent to allow the accused person Moinul Hoque to go on bail of Rs.40,000/- with two local sureties of the like amount, one of which should be a Government servant of at least Grade-III rank, to the satisfaction of the Learned Elaka Magistrate on the following conditions :-".***

It appears from the above order passed by the learned Additional Sessions Judge aforesaid that while the accused petitioner was granted bail, the condition was to the effect that he is to furnish two local sureties of Rs.40,000/- each and out of the two local sureties, one must be a government servant in the rank of Grade-III.

Learned counsel for the petitioner has submitted that the petitioner is a daily wage earner and he hails from a place called South Salmara in the State of Assam. The bail bond is to be furnished by the accused petitioner in the Court at Guwahati. On examination of the entire materials on record, including the impugned order, it does not appear to this Court that specific reason has been assigned in the order to justify demand of a government servant as surety, and, that too, of a particular rank. Normally, when bail is granted, surety is to be furnished. Unless unusual course is adopted, reason is not required to be given for asking any surety. However, since an unusual course of demanding the surety of a government servant of a particular rank is directed by the learned Court below, there must be some reason for such a decision.

However, on examination of the order, it does not appear to this Court as to under what circumstance a government servant of a particular rank was directed to be one of the sureties. The petitioner is said to be a daily wage earner.

I have taken into account the decision of the Hon'ble Supreme Court in the case of ***Moti Ram and others Vs. State of M.P.*** reported in ***AIR 1978 SC 1594*** as placed before this Court by Mr. A. Islam, learned counsel for the petitioner and has taken note of paragraphs-31

and 32 thereof, which read as follows :-

***31. It shocks one's conscience to ask a mason like the petitioner to furnish sureties for Rs 10,000. The Magistrate must be given the benefit of doubt for not fully appreciating that our Constitution, enacted by 'We, the People of India', is meant for the butcher, the baker and the candlestick maker — shall we add, the bonded labour and pavement dweller.***

***33. To add insult to injury, the Magistrate has demanded sureties from his own district! (We assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamil or Telugu to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair, Pahalgam or Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non-regional language applications? What law prescribes the geographical discrimination implicit in asking for sureties from the court district? This tendency takes many forms, sometimes, geographic, sometimes linguistic, sometimes legalistic. Article 14 protects all Indians qua Indians within the territory of India. Article 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. Swaraj is made of united stuff.***

On consideration of the facts of the given case, as indicated above, and in the light of the decision of the Hon'ble Supreme Court, referred to above, this Court is of the view that surety of a government servant, as sought for, is too harsh for the petitioner that it would amount to refusal of bail as he wouldn't be out on bail if required to produce a Government Servant as surety.

That being so, while retaining the order of furnishing two sureties, this Court considers

the condition that one of the sureties to be a government servant of Grade-III rank appears to be unjust and unfair and, therefore, the condition of one of the surety to be a government servant is set aside. Accordingly, the order impugned is partially set aside.

This order is passed to secure the ends of justice as provided in Section 482 of the Code of Criminal Procedure.

This criminal petition, accordingly, stands disposed of.

JUDGE

**Comparing Assistant**