

(1981) 11 GAU CK 0003

In the Gauhati High Court

Case No : Criminal Miscellaneous Case No. 397 of 1981

Sri Kiran Chandra Goswami

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 18-11-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437
Penal Code, 1860 (IPC) — Section 408, 468

Citation : (1982) 1 GLR 385

Hon'ble Judges : N. Ibotombi Singh, J

Bench : Single Bench

Advocate : P.G. Baruah and D. Goswami, for the Appellant;

Judgement

N. Ibotombi Singh, J.—Heard Mr. P.G. Baruah, learned Counsel for the Petitioner as well as the learned Public Prosecutor for the State.

2. The Petitioner, Sri Kiran Chandra Goswami, surrendered in person to the Additional Chief Judicial Magistrate, Golaghat, in connection with G.R. Case No. 681 of 1974, arising out of, the F.I.R. Sarupathar P.S. Case No. 8(6)/74. He is named in the F.I.R. as one of the accused. While surrendering, he prayed for his release on bail u/s 437, Code of Criminal Procedure. which the Magistrate refused on the ground that he has not been arrested or detained till then by the police in a non-bailable offence, nor has any process been issued for his arrest and appearance before the Court. It appears that the learned Additional Chief Judicial Magistrate has erroneously put an interpretation on the provision of Section 437, Code of Criminal Procedure which lays down in clear terms that when any person accused of or suspected of the commission of any non-cognizable offence appears before a court other than the High Court or the Court of Session, he may be released on bail, but he shall not be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life. There are two provisions of this Section with which we are not concerned. When a person in such a situation

appears before a Magistrate on surrender, three courses are open to him. The Magistrate may release him on bail, or remand him further to judicial custody, or remand him to the Custody of the police to facilitate investigations if prayed for by the investigation agency. The Magistrate has to adopt one of, the courses open to him in exercise of the judicial discretion, having regard to the facts and circumstances of each case, In the present case, the Petitioner who is involved as an accused the non-bailable offence u/s 408/468, I.P.C., was in judicial custody, when he surrendered himself to the Addl. Chief Judicial Magistrate. The Addl. Chief Judicial Magistrate to the circumstances ought to have considered his bail application on merits either to reject or grant the bail and ought to have, passed an appropriate Order, as indicated above.

3. I have considered the application for bail filed to this Court. The Petitioner was a Secretary of the School at the relevant time when the alleged offences were committed. He is at present holding the post of Supervisor in the Co-operative Society sponsored by the Govt, and is posted at Gauhati. A co-accused in the case has also been released on bail. He has family members and has roots in the society. The question of hampering with the investigation does not seem to arise at this state. On a consideration of the circumstances above, the Petitioner is released on bail subject to his execution of bond of Rs. 500.00/- With one surety in the like amount to the satisfaction of the Addl. Chief Judicial Magistrate, Golaghat. The petition is disposed of as such.