

GAHC010005792023



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

Case No. : AB/74/2023

AZAD ALI
S/O IBRAHIM SEIKH R/O H NO. 5 GREEN PATH BYELANE NO. 1
SAHANGAR HATIGAON P.S. HATIGAON DIST. KAMRUR(M) GUWAHATI
ASSAM AND PERMANENT R/O VILL. PUB PADOKHAT CHALANI KUCHI P.S
DHULA DIST. DARRANG ASSAM PIN-784190

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B BURAGOHAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

01.02.2023

Heard Mr B Buragohain, learned counsel for the petitioner and Mr P S Lahkar, learned Additional Public Prosecutor for the State of Assam.

2. By filing this application under Section 438 CrPC, the petitioner, Azad Ali, has prayed for granting him pre-arrest bail in connection with Gingia PS Case No. 33 of 2022, under Sections 379/411/34 of the Indian Penal Code, 1860, read with Section 13

of the Assam Cattle Preservation Act, 2021 and Section 11 of the Prevention of Cruelty to Animals Act, 1960.

3. Case Diary is received.

4. The brief facts of the case is that on 25.04.2022, one SI of Police of Gingia Police Station lodged an FIR before the OC, Gingia Police Station, stating *inter alia* that on 25.04.2022, in the morning hour, while the informant along with the staff of Ginjia Police Station were performing naka-cheking at Madurali over NH-15, they intercepted one Bolero Pick-up vehicle, AS-01-LC/3999. On being searched the vehicle, they recovered 14 numbers of cattle. On enquiry, they came to know that the cattle were being transported from Gohpur to Besimari, but the driver of the vehicle could not reply about the owner of the recovered cattle. During interrogation, the driver also failed to show any documents in respect of transporting of 14 numbers of cattle in the Bolero vehicle. As such the cattle and the Bolero vehicle were seized It is suspected that the cattle were stolen from somewhere for selling them illegally out of the State.

5. On receipt of the complaint, a case was registered vide Ginjia PS Case No. 33 of 2022, under Section 379/411/34 IPC, read with Section 13 of Assam Cattle Preservation Act and Section 11 of the Prevention of Cruelty to Animals Act, 1960.

6. It is submitted by the learned counsel for the petitioner that he is the owner of the vehicle AS-01-LC/3999, which was seized in connection with the aforesaid case. He had no knowledge regarding carrying of cattle in his vehicle. On the date of incident, his vehicle was hired by one vegetable vendor, for carrying vegetables from Besimari to Lakhimpur Town, but he never allowed his vehicle to be used in transportation of cattle.

7. On the other hand, learned Additional Public Prosecutor has submitted that the cattle were recovered from the vehicle of the petitioner when it was intercepted at Madurali. The driver also failed to produce any valid documents for transporting the cattle from one place to another. It cannot be taken into consideration that the owner of

the vehicle had no knowledge of illegal transportation of the cattle, for which the privilege of pre-arrest bail may be granted to him.

8. I have considered the submissions made by the learned counsel for both the parties and I have also perused the Case Diary.

9. It reveals that the driver and handyman of the vehicle were arrested. On being asked, the driver of the vehicle clearly stated that the cattle were being transported from Gohpur to Besimari, but he did not reply about the owner of the vehicle.

10. Section 7 of Assam Cattle Preservation Act, 2021, deals with Prohibition on transportation of cattle.

“(1) No person shall transport or offer for transport or cause to be transported any cattle, without valid permit, from,-

(i) any place of other State through Assam to any place outside State of Assam;

(ii) any place within the State of Assam to any place outside the State of Assam where slaughter of cattle is not regulated by law.

(2) No person shall transport or offer for transport or cause to be transported any cattle from any place of other State to any place within the State the slaughter whereof is punishable under this Act.

(3) No person shall transport or offer for transport or cause to be transported any cattle from any place within the State to any other place within the State, the slaughter whereof is punishable under this Act.”

xxx xxx xxx

Clause (14) of Section 7 of the Assam Cattle Preservation Act, 2021 reads as under:-

“Whenever any person transports or causes to be transported cattle in contravention of provisions of Sub-Sections (1), (2) and (3), such vehicle or any conveyance used in transporting such cattle, along with cattle shall be liable to be seized by such authority or

officer as specified in Section 11 of this Act and any such person, suspected to have committed such offence, may be detained.”

11. On a bare perusal of the aforesaid provision, it reveals that a person is not permitted to transport or offer for transport or cause to be transported any cattle without valid permit from one place to other place in the State of Assam. In the case in hand, the petitioner has failed to produce any valid permit to transport the cattle in his vehicle.

12. It is an admitted fact that the petitioner is the registered owner of the vehicle, from which 14 numbers of cattle were recovered and the witnesses examined by the Investigating Officer, during investigation also supported the fact that the cattle were recovered from the Bolero Pick-up vehicle and seizure list was prepared in their presence. The petitioner is not permitted to take the plea that he had no knowledge for carrying the cattle illegally in his vehicle.

13. Having regard to the nature of allegations and the facts and circumstances of the case, this Court is of the opinion that it is not a fit case to grant the privilege of pre-arrest bail to the present petitioner. Accordingly, his bail prayer cannot be considered and hence, rejected.

14. With the aforesaid observations and directions, this Anticipatory Bail Application stands disposed of.

JUDGE

Comparing Assistant