

GAHC010025692023



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

**Case No. : AB/388/2023**

SIRAJUL HAQUE @ SIRAJUL ALI AND ANR  
S/O- LATE AMZAD ALI (AMZAD), R/O- VILL.- NO. 2 BHUNDARA, P.S.  
MANIKPUR, DIST. BONGAIGAON, ASSAM

2: NUR ISLAM  
S/O- MD. HEKMAT ALI  
R/O- VILL.- NO. 2 BHUNDARA  
P.S. MANIKPUR  
DIST. BONGAIGAON  
ASSA

VERSUS

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

**Advocate for the Petitioner : MR. N J DUTTA**

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

**BEFORE**  
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**Date : 21.04.2023**

Heard Mr. N. J. Dutta , learned counsel appears for the  
petitioner. Also heard Ms. S. H. Borah, learned Additional  
Public Prosecutor appearing for the State of Assam.

This Anticipatory bail petition has been filed by the petitioners, namely, Sirajul Haque @ Sirajul Ali and Nur Islam apprehending arrest in connection with PRC Case No.170/2020 arising out of Serfanguri Police Station Case No. 48/2019 under Section 395 of IPC, pending before the Court of learned Judicial Magistrate First Class, Kokrajhar, Assam.

By order dated 10.04.2023 passed by this Court, scanned copy of the LCR was called for. The scanned copy called for has been received. It is seen that the charge-sheet in the matter has been filed vide charge-sheet No. 05 dated 30.02.2020 and the matter is pending trial before the Court of Judicial Magistrate First Class, Kokrajhar, Assam.

From the scanned copy called for from the Court, it is seen that the petitioners has been shown as absconder in the charge-sheet, which has been filed. Consequently, the Trial Court issued NBWA and also P & A against the petitioners.

The learned counsel for the petitioners submits that as per the law laid down by the Apex Court in ***Aman Preet Singh Vs C.B.I Through Director***, reported in ***(2021) SCC online SC 941 in Criminal Appeal No. 929 of 2021 {arising out of SLP (Crl.) No. 5234 of 2021}***, ordinarily the Magistrate of the Court is required to issue process of summons and not Warrant of Arrest. In case he seeks to exercise discretion for issuance of Warrant of Arrest he has to records reasons as provided under Section 87 of Cr.P.C. During investigation, ordinarily as the matter of course, the accused

should not be directed to be arrested.

The Apex Court in this Judgment has referred to its earlier Judgment rendered in ***Siddharth Vs State of Uttar Pradesh and Anr***, reported in ***(2022) 1 SCC 676*** and Judgment dated 20.03.2023 rendered in ***Mahdoo Bava Vs Central Bureau of Investigation*** in Criminal Appeal No.....of 2023 (Arising out of SLP (Crl) No. 376 of 2023).

In view of the law laid down by the Apex Court, this anticipatory bail petition is closed directing the petitionerS to appear before the Competent Court in response to the summons received in connection with PRC Case No. 170/2020, before the Court of Judicial Magistrate First Class, Kokrajhar, Assam.

Upon their appearance, the petitioners are at liberty to make necessary prayers before the Competent Court and the Competent Court upon consideration of the matter on its merits and taking into consideration the law laid down by the Apex Court will pass appropriate order. And till such application is disposed of by the Judicial Magistrate First Class, Kokrajhar, the P & A and NBWA issued against the petitioners shall remain stayed.

This Anticipatory Bail application is accordingly disposed of in terms of the above.

**JUDGE**

**Comparing Assistant**