

GAHC010039192023



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

Case No. : Bail Appln./658/2023

MD. JIARUL ISLAM AND 4 ORS
S/O MD. JAMAL SHEIKH
R/O VILL- BELDUBI
P.S. FAKIRGANJ
DIST. DHUBRI, ASSAM

2: MINTU MANDAL
S/O SUKUR MANDAL
R/O VILL- SALAKURA
P.S. FAKIRGANJ
DIST. DHUBRI
ASSAM

3: MD. RAKIBUL HUSSAIN
S/O MD. GULZAR HUSSAIN
R/O VILL- SALAKURA
P.S. FAKIRGANJ
DIST. DHUBRI
ASSAM

4: MD. SUJAN ALI
S/O MD. JELAL ALI
R/O VILL- GUSAIDUBI
P.S. FAKIRGANJ
DIST. DHUBRI
ASSAM

5: MAHAMMAD ALI
S/O MD. NASRAD ALI SEIKH
R/O VILL- GUSAIDUBI
P.S. FAKIRGANJ
DIST. DHUBRI
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 09.03.2023

Heard Mr. N. J. Dutta, learned counsel for the accused/petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State of Assam.

This is an application under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioners, who have been languishing in jail hazot in connection with Basistha P.S. Case No. 19/2023, under Section 380 of the Indian Penal Code.

Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the accused/petitioners, Mr. N. J. Dutta, that the F.I.R. of the instant case was lodged on 05.01.2023 and the accused/petitioners were arrested in connection with this case only on suspicion

and since 19.01.2023, they are in custody. Further, from the ground of arrest, it reveals that the accused/petitioners were arrested only because they were found loitering in the area and for which, they were arrested in connection with this case. Further it is submitted by the learned counsel for the accused/petitioners that in an earlier case, all the accused/petitioners were released on bail by this Court on 03.08.2022 and thereafter they are booked in connection with this case only on suspicion on the basis of the F.I.R. dated 05.01.2023. They have already co-operated with the I.O. in connection with the investigation of this case and they are still ready and willing to co-operate the I.O. in the further investigation of the case if they are enlarged on bail.

In this context, the learned Additional Public Prosecutor, Mr. P. Borthakur, has submitted that the stolen articles are not yet recovered and all the accused/petitioners have confessed in their statement recorded under Section 161 Cr.P.C. regarding their involvement with the alleged offence. More so, as per the statement of the accused/petitioners, after stealing those articles, they have sold the same to one Kishore Kalita of Jorabad and on inquiry by the police, it is seen that there is no such person named Kishore Kalita in that area where the stolen articles are alleged to have been sold. Further it is submitted that the accused/petitioners are not only involved in the present case, but they have criminal antecedents and for which, they were also earlier booked in connection with the case under Sections 302/201 of the Indian Penal Code. Accordingly, it is submitted that further custodial interrogation of the present accused/petitioners may be necessary for the interest of just and proper investigation of the case.

After considering the submissions of learned counsels of both sides, I have perused the Case Diary and the relevant documents filed along with the petition. It reveals that till date, there is no recovery of the theft articles though it is stated by the accused/petitioners before the police that they have sold all the articles to one Kishore Kalita.

Considering the nature of offence and the antecedents of the present accused/petitioners, I find that further custodial interrogation of the present accused/petitioners may be necessary for just and proper investigation of the case and therefore, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused/petitioners and accordingly, the same stands dismissed.

The Case Diary be sent back.

JUDGE

Comparing Assistant