

GAHC010047762023



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

Case No. : AB/729/2023

MRIGANKA SARMA @ MRINAL SARMA AND ANR
S/O LATE DINESH SARMA
R/O RAJAPUKURI
P.O. BHAGAWATI PARA
PIN-781132, P.S. PALASHBARI
DIST. KAMRUP (R), ASSAM

2: SHRI KAMAL KUMAR
S/O LATE KARUNA KUMAR
R/O RAJAPUKHURI
P.O. BHAGAWATI PARA
PIN- 781132
P.S. PALASHBARI
DIST. KAMRUP (R)
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P BORDOLOI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 17.03.2023

Heard Mr. A.K. Gupta, learned counsel appearing on behalf of Mr. P. Bordoloi, learned conducting counsel for the petitioners and Ms. N. Das, learned Addl. Public Prosecutor for the State respondent.

This application under Section 438 Cr.P.C. has been filed seeking pre-arrest bail by the petitioners, who are apprehending arrest in connection with Tamulpur P.S. Case No. 17/2023 (Corresponding to G.R. Case No. 56/2023) registered under Sections 120B/417/420/34 IPC.

Case diary as called for is received and perused.

The brief facts of the case is that in the month of October, 2020, the husband of the informant came to the petitioners to repair of his excavator and the same was not repaired by the petitioners. The excavator was, thereafter, taken to Guwahati for further repairing and after it was finally repaired, the excavator was handed over to one Asadul Haque in the month of November, 2020 as per instruction of the husband of the informant. After about two and half years of return of the said excavator, the present FIR has been lodged by the informant with the allegation that they have not returned the excavator nor to pay any rent to the informant.

It is further submitted that petitioners are engineers serving for repair of the vehicle but vehicle was not repaired and the vehicle was handed to one Ashadul Haque and the FIR was lodged after two and half years and the petitioners have neither returned the vehicle nor pay any rent to the complainant towards use of the excavator. The learned counsel for the petitioner submits that two accused persons are already granted interim pre-arrest bail and the present petitioners are ready and willing to co-operate with the investigation, if the petitioners are granted interim pre-arrest bail in the present

case.

In this context, Ms. N. Das, learned Addl. PP has raised objection for granting pre-arrest bail to the petitioner as there are sufficient incriminating materials available in the case diary against the petitioners and she submits that the petitioners have fixed Rs. 25,00,000/- to be paid as rent to the informant for the use of the vehicle but they have not paid any amount to the complaint towards rent of the said excavator. There is apprehension that as the vehicle was not returned, the same may be sold to other persons.

However, the I.O. of this case has made note that there are sufficient materials against the petitioners and their custodial interrogation is essential for the purpose of just and proper investigation of the case.

In view of the above, considering the facts and circumstances of the case, custodial interrogation of the petitioners are necessary to unearth the truth and therefore, the prayer for pre-arrest bail is rejected.

The bail application stands dismissed.

Return the case diary.

JUDGE

Comparing Assistant