

GAHC010058152023



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

Case No. : AB/1001/2023

KAMAL HUSSAIN @ TUTA AND ANR
S/O ALI AKBAR
VILL- S ABOTI KAILYANPUR
P.O. SABOTI,
P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR, ASSAM

2: SAHAR ALI @ SANU ALI
S/O SAIDUL ISLAM
VILL- SABOTI
P.O. SABOTI
P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR ASSA

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR G PHUKAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 21-04-2023

1. Heard Mr. G Phukan, learned counsel for the petitioners **1. Kamal Hussain @ Tuta** and **2. Sahar Ali @ Sanu Ali**. Also heard Mr. K.K. Parashar, learned Addl. PP, Assam.
2. The petitioners have filed an application under section 438

Cr.P.C., in connection with North Lakhimpur PS Case No.557/2022 under section 392 IPC (corresponding to GR Case No.1163/2022).

3. The FIR unfolds that on 12.10.2022, Rajkumar had asked the informant to visit his house at Lilabari Airport junction, North Lakhimpur Bypass. On his way to Itanagar, the informant reached the Lilabari Airport junction at about 10.00 AM on the day of the incident and then Rajkumar asked him to wait for his friend to show him the way to his house. After sometime a person on a black motorbike bearing registration No.AS 070 8880 arrived and asked the informant to follow him. After the informant followed the person on the bike with his car for about 1 km, he was asked to park his car on the roadside and thereafter, the unknown person then asked the informant to follow him on foot and the informant followed the person for about 100 meters and reached the house where Rajkumar was also present with another unknown person. Thereafter they had a discussion about black turmeric from Pasighat and then the informant was asked about the purpose for his visit to Itanagar and the informant told them that he was proceeding to Itanagar to purchase a plot of land. As the informant left the house of where Rajkumar was and was proceeding towards his vehicle, Rajkumar and his associates followed him to his vehicle and Rajkumar opened the left back door and the other person opened the left front door for passengers. An amount of Rs.30,00,000/- kept in a bag in the front side was forcefully taken by the unknown person and thereafter, Rajkumar and the unknown person fled with the informant's bag full of money.

4. The informant tried to pursue the unknown person but the person disappeared and when he went to the house of Rajkumar where was waiting, there was another person in the house and then the informant asked him about Rajkumar and told him about the incident. When the person in Rajkumar's house called Rajkumar over phone, the informant recorded their conversation. Then the person snatched away his phone in which the informant had recorded their conversation and fled away. Later the informant discovered that his suitcase containing his passport was also stolen.

5. The learned Addl. PP has raised serious objection stating that there are incriminating materials in the case diary.

6. The person named Rajkumar along with his associates operates in a gang controlled by a gang leader. In this manner they had robbed many people.

7. There are cogent materials in the case diary against the petitioner. The petitioners have been named by co accused.

8. I have considered the gravity of the offence.

9. There are indeed incriminating materials in the case diary.

10. The import of the section under which the petitioners are booked, does not construe that the petitioners are entitled to anticipatory bail at this stage of investigation.

11. In view of my foregoing discussions, the prayer for pre arrest bail of the petitioner is rejected at this juncture.

12. Send back the case diary.

JUDGE