

GAHC010147742023



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

**Case No. : AB/2362/2023**

MOTIBAR RAHMAN AND ANR  
S/O- LATE SATTAR ALI, VILL- THARIGRAMVITA, MANTRIRCHAR, P.S.  
SOUTH SALMARA, DIST.- DHUBRI, ASSAM, PIN- 783324

2: MONER ALI  
S/O- CHARMAT  
VILL- KHARERCHAR  
P.S. DHUBRI  
P.O. PATAMARI  
DIST.- DHUBRI  
ASSAM  
PIN- 78332

VERSUS

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

**Advocate for the Petitioner : MR. A K SARMA**

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

**BEFORE  
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**Date : 04.07.2023**

Heard Mr. A. K. Sarma, learned counsel appearing for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor appearing for the State of Assam.

2. By this application under Section 438 of Cr. P.C., the petitioners, namely, 1. Motibar Rahman and 2. Moner Ali are seeking Anticipatory Bail apprehending arrest in connection with an FIR dated 21.09.2019, lodged by the informant, one, Aijul Hoque, which is registered as Dhubri Police Station case No. 1664/2019, registered under Sections 366/34 of IPC, additional Section 4 of the POCSO Act, 2012.

3. It is submitted by the learned counsel for the petitioners that in pursuance to the FIR dated 21.09.2019 lodged by the informant making allegation against the accused persons named therein, a case was registered as Dhubri Police Station case No. 1664/2019, registered under Sections 366/34 of IPC, additional Section 4 of the POCSO Act, 2012. Petitioners of this case are named as accused persons No.3 and 4 in the said FIR. Subsequently, upon due investigation, charge-sheet has been filed by the Investigating Officer before the competent Court.

4. Learned counsel for the petitioners submits that the prime

accused in the matter has been enlarged on bail by order dated 11.11.2019. The petitioners of this present application have not been summoned to appear before the competent Court in Special Case No. 448/2022. The petitioners apprehend that they shall be taken into custody upon their appearance before the competent Court in pursuance to the summons served on them.

5 Mr. R. J. Baruah, learned Additional Public Prosecutor appearing for the State of Assam submits that this apprehension is misplaced as the petitioners have not responded to the summons and appear before the competent Court. Under such circumstances, this Anticipatory Bail application is not maintainable

6. Having heard the learned counsels for the parties and perusal of the records, this Court is of the view that ends of justice will suffice if the petition is disposed of directing the petitioner to appear before the Court of Additional Sessions Judge cum Special Judge, POCSO, Dhubri in connection with GR Case No. 5044/2019 arising out of Dhubri Police Station Case No. 1664/2019. If the petitioners appears before the Court of Additional Sessions Judge cum Special Judge, POCSO, Dhubri in pursuance to this Court's order, the Warrant of Arrest issued by the Court of Additional Sessions Judge cum Special Judge, POCSO, Dhubri against the petitioners will be recalled. The petitioners will, thereafter, file regular bail application which will be considered by the competent Court on its own

merit.

7. This Court is of the view that in the face of law laid down by the Apex Court in ***Siddharth Vs State of Uttar Pradesh and Anr***, reported in ***(2022) 1 SCC 676*** and Judgment dated 20.03.2023 rendered in ***Mahdoom Bava Vs Ventral Bureau of Investigation*** in Criminal Appeal No.....of 2023 (Arising out of SLP (Crl) No. 376 of 2023), it is no longer *res integra* that appearance of the accused persons pursuant to summons being issued do not necessarily in all cases require orders directing the accused to be taken into custody as a matter of course. When the law has already been laid down by the Apex Court, no further orders are necessary to be passed by this Court.

8. In view of the law laid down by the Apex Court, this Anticipatory Bail petition is closed directing the petitioner to appear before the Competent Court in connection with GR Case No. 5044/2019 arising out of Dhubri Police Station Case No. 1664/2019, before the Court of Additional Sessions Judge cum Special Judge, POCSO, Dhubri.

9. 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 01.08.2023 the Warrant of Arrest issued by the Court of Additional Sessions Judge cum Special Judge, POCSO, Dhubri against the

petitioners in GR Case No. 5044/2019 arising out of Dhubri Police Station Case No. 1664/2019, shall remain stayed.

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

**JUDGE**

**Comparing Assistant**