

GAHC010163652023



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

Case No. : AB/2676/2023

RAFIQUL ISLAM @ RAFIUL AND ANR
S/O KAMAR UDDIN
R/O VILL- KALIADINGA
P.S. RUPAHI
DIST. NAGAON, ASSAM

2: IRSHAD ALI
S/O SAMAR ALI
R/O VILL- FALIHAMARI
P.S. BHURAGAON
DIST. MORIGAON
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. T CHUTIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

31.08.2023

Heard Mr. T. Chutia, learned counsel for the petitioners. Also heard Mr. P.S.

Lahkar, learned Additional Public Prosecutor, appearing for the State of Assam.

This is an application under section 438 of the Code of Criminal Procedure, 1973 filed by the petitioners, namely, 1. Rafiqul Islam @ Rafiul and 2. Irshad Ali, who are apprehending their arrest in connection with Bokakhat P.S. Case No. 80/2023, under section 379/411 of the Indian Penal Code, R/W section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960, R/W section 13(1) Assam Cattle Preservation Act, 2021.

The accusation in this case is that on 16.05.2023, one Shri Anil Das, ASI of police of Kohra Police Station lodged an FIR before the Officer-in-Charge of Bokakhat Police Station, *inter-alia*, alleging that on 06.07.2023, on receipt of a secret information that a vehicle bearing Registration No. AS-01PC-0114 was carrying stolen goods from Bokakhat side to Kohra, a search operation was conducted in front of Kohra police outpost and during search operation it was found that the said vehicle was carrying 29 numbers of cattle. When the driver of the said vehicle was interrogated, he failed to produce any documents regarding the seized cattle. It is suspected that the said cattle were being smuggled outside the State for slaughter purpose illegally.

On receipt of the said FIR, Bokakhat P.S. Case No. 80/2023, was registered.

Learned counsel for the petitioners has submitted that the the petitioner No. 1, namely, Rafiqul Islam @ Rafiul is the owner of the seized cattle and in support of his submission he has produced the copies of receipt of purchase of cattle issued by Bihora Weekly Cattle Sale Market, Bokakhat.

Learned counsel for the petitioners has also submitted that the petitioner No. 2, Md. Irshad Ali, is the owner of the vehicle bearing Registration No. AS-01PC-0114 which was involved in the said offence and in support of his

contention he has produced the registration certificate as Annexure No. 3.

It is also submitted by the learned counsel for the petitioners that the present petitioners are no way involved in the offence alleged against them and they are ready to co-operate with the Investigating Officer of this case.

On the other hand, learned Additional Public Prosecutor, has vehemently oppose the grant of bail to the present petitioner on the ground that the cattle which were seized in this case are claimed to be cattle belonging to the petitioner No. 1 and there is every likelihood that said cattle were transported only with his permission and he has also opposed the grant of bail to the petitioner No. 2 on the ground that there is every likelihood that the vehicle of the petitioner No. 2 was also used in commission of the alleged offence with his consent.

Learned Additional Public Prosecutor, has also placed the case diary of Bokakhat P.S. Case No. 80/2023 before this Court.

I have considered the submissions made by learned counsel for both parties and have gone through the case diary of Bokakhat P.S. Case No. 80/2023. It appears that the driver of the seized vehicle has not implicated any of the present petitioners in his statement. Though, there may be possibility of involvement of the present petitioners in the alleged offence, however, as on date, there is no direct evidence on record against any of the present petitioners regarding their willful involvement in the alleged offence.

Under the facts and circumstances of the present case, this anticipatory bail application is disposed of with a direction to the petitioners, namely, Rafiqul Islam @ Rafiul and 2. Irshad Ali to appear before the Investigating Officer of Bokakhat P.S. Case No. 80/2023 within a period of 10(ten) days from the date of this order and co-operate with the Investigating Officer and and if they do so

within the stipulated period of time, in the event of their arrest in connection with Bokakhat P.S. Case No. 80/2023, they shall be allowed to go on interim bail of Rs. 30,000/- each with a suitable surety of like amount to the satisfaction of the arresting authority, subject to the conditions that:-

(i) the petitioners shall continue to appear before the Investigation Officer of Bokakhat P.S. Case No. 80/2023, as and when so required by the Investigation Officer for the purpose of fair investigation of this case.

(ii) the petitioners shall continue to co-operate with the Investigation Officer of Bokakhat P.S. Case No. 80/2023 during the pendency of the investigation.

With the above observation, this anticipatory bail application is hereby disposed of.

JUDGE

Comparing Assistant