

GAHC010165412022



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

Case No. : I.A.(CrI.)/475/2022

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2: SIMANTA ROY
S/O HARKANTA ROY
S.I. OF POLICE
PALTANBAZAR P.S.
CENTRAL POLICE DISTRICT
POLICE COMMISSIONERATE
GUWAHAT

VERSUS

POONAM THAKUR AND ANR
W/O SRI AWADH KISHOR THAKUR, R/O BHANGAGARH, G.S. ROAD, P.S.-
BHANGAGARH, GUWHAATI, DIST-KAMRUP (M)

2:AWADH KISHOR THAKUR
S/O MUNNI LAL THAKUR
R/O BHANGAGARH
G.S. ROAD
P.S.-BHANGAGARH
GUWHAATI
DIST-KAMRUP (M)

Advocate for the Petitioner : PP, ASSAM

Advocate for the Respondent : MR. B BHAGAWATI

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 14-02-2023

Heard Mr. P. Borthakur, learned Addl. P.P., Assam, appearing for the applicants No. 1. Also heard Mr. B. Bhagawati, learned counsel for the respondents.

This is an application under Section 439(2) Cr.P.C. for cancellation of the order dated 16.09.2021 passed in A.B. No. 2387/2021 granting pre-arrest bail to the respondent Nos. 1 & 2.

Case diary has been received.

I have perused the case diary.

The learned Addl. P.P. Mr. Borthakur submitted that the present application for cancellation of bail, as the respondents did not co-operate with the I.O. in violation of the order, for which present application for cancellation of bail has to be filed. It is stated that the accused respondents being the influential person there is every probability of influencing the victim by hampering and tempering the evidence.

Further, it is stated by the learned Addl. P.P. that the respondent No. 1 Ms. Poonam Thakur never appeared before the I.O. and did not co-operate in the investigation of this case even after getting order of absolute pre-arrest bail dated 16.09.2021. It is admitted fact that the other respondent No. 2 appeared before the I.O. and recorded his statement under Section 161 Cr.P.C. but the respondent No. 1 did not appear before the I.O. It is stated that the accused/ respondents never appeared before the I.O. after obtaining interim pre-arrest bail and also after obtaining absolute bail thereby not cooperated with the investigation of the case. It is further stated that notice under Section 41 (A) Cr.P.C. was served upon them but the accused/ respondents never responded. Further it is a fact that civil dispute is going on between the parties where both the parties contested the case before the Civil Court.

In this context the learned counsel for the respondent has submitted that the dispute between the parties is purely civil nature. However, after filing bail application both the parties appeared before the Court and obtained pre-arrest bail order dated 19.08.2021 and the respondent No. 2 appeared before the I.O. with all relevant documents and accordingly he was discharged. However, the respondent No. 1 could not appear before the I.O. due to her severe illness and considering her medical ground the I.O. did not ask the respondent No. 1 to appear before the police station. Thereafter, the pre-arrest bail was made absolute by this Court vide order dated 16.09.2021. As there was no specific order in the order of pre-arrest bail, the respondents did not appear before the I.O. and they were not called for. However, both the parties appeared before the Civil Court and contested the suit pending before the Civil Court. Suddenly, after receipt of the SMS from a person who disclosed his identity as I.O. and asked them to appear before the police station. Due to the illness of the respondent No. 1 they sought for time for appearance. Thereafter, the respondent No. 2 again appeared before the I.O. on 19.09.2022 and 21.09.2022 and apprised all the relevant facts before the I.O. But, only due to illness the respondent No. 1 could not appear before the I.O. She is willing to appear before the I.O. and to record her statement under Section 161 Cr.P.C. The respondents are permanent resident of the State and apart from that a civil suit is also pending before the Court. Hence, there is no probability of absconding the respondents. Accordingly prayed that the respondent No. 1 may be allowed to appear before the I.O. and prayed for dismissal of the present petition.

After considering the statement of both the parties and considering the nature of offence and other relevant aspects, I find that it is not a fit case to cancel bail which was granted to the respondents vide order dated 16.09.2021. Accordingly, the application for cancellation of bail stands rejected with a direction to both the respondents to appear before the I.O. within 7 days from today.

With the above observation and direction, this I.A.(CrI.) stands disposed of.

JUDGE

Comparing Assistant