

GAHC010168692023



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

Case No. : AB/2725/2023

NAREN TANTI AND 4 ORS.
S/O SRI RAMESH TANTI
R/O RUPNAGAR, CHINAMARA
P.O. CINAMARA
P.S. JORHAT,
DIST. JORHAT, ASSAM
PIN-785008

2: SRI BIKASH JYOTI GOHAIN
S/O LATE ATUL GOHAIN
R/O BIBIJAN GAON
P.O. AND P.S. TITABOR
DIST. JORHAT
ASSAM
PIN-785630

3: SRI BIMAL DAS
S/O SRI DINANATH DAS
R/O KHAMJANGIA
P.O. AND P.S. TITABOR
DIST. JORHAT
ASSAM
PIN-785633

4: SRI SANJAY MAHANTA
S/O SRI BIREN MAHANTA
R/O BARHOIBARI
P.O. BARHOI BARI
MAHAJAN GAON
P.S. TITABOR
DIST. JORHAT
ASSAM
PIN-785630

5: LAKHYAJIT BORAH
S/O LATE RABIN BORAH
R/O DICHIAL
P.S. GOURISAGAR
DIST. SIVASAGAR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M SHARMA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 25-08-2023

Heard Mr. B. D. Konwar, learned Senior Counsel for the applicants and also heard Ms. R.J.Baruah, learned Addl. P.P. for the State respondent.

Apprehending arrest in connection with Pulibar P.S. Case No. 117/2023 under Section 395 IPC, this application under Section 438 Cr.P.C. is preferred by the applicants, namely, 1. Sri Naren Tanti, 2. Sri Bikash Jyoti Gohain, 3. Sri Bimal Das , 4. Sri Sanjay Mahanta and 5. Lakhyajit Borah for grant of pre-arrest bail.

The aforementioned case has been registered on the basis of one FIR lodged by one Julimon Boro on 21.6.2023 to the effect that some miscreants have snatched away her Dumper, bearing registration No.AS-03-CC-2129, registered in her name, from Gahtemora village and stolen a sum of Rs.2,00,000/-, which was in the hands of the driver and also caused mischief of

the mobile of the driver.

Mr. B.D.Konwar, learned counsel for the petitioner submits that petitioner Nos.1,2,3 and 5 are the recovery agent of the Tata Motors finance and petitioner No.5 is the employee of the Tata Motors Finance. Further, Mr. Konwar submits that informant had purchased the Dumper from the Tata Motor Finance on hire purchase and she had failed to make repayment of installment amount for which the Company repossess the vehicle and that no offence u/s 395 IPC are made out against the applicants and they are ready to cooperate with the investigating agency and they will abide by any condition imposed by this court and therefore, it is contended to allow this petition.

On the other hand, Mr. Barua learned Addl. P.P. has produced the case diary before this court and submits that some materials are collected against the applicants by the I.O. in the case diary, and on the basis of the same, Mr. Borua opposed the petition.

On the other hand, Mr. K.K.Borua, learned counsel for the informant submits that the informant is being threatened by the applicants for the last 7/8 days and if the applicants are enlarged on bail they will continue the same.

In reply to the submission of Mr. Barua, learned Senior Counsel Mr. B. D. Konwar, assured this Court that in future, applicants will never indulge in to such activities and that they are ready to abide by any condition imposed by this Court.

Having heard the learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Borua, learned Addl. P.P. for the State respondent.

Indisputably the petitioner Nos. 1,2,3 and 5 are the recovery agent, of Tata Motor Finance and applicant No.4 is the employee of Tata Motor Finance and admittedly the vehicle was purchased by the informant on hire purchase from the Tata motor finance Company and admittedly, also she failed to make repayment of the installment to the Company.

In this context, it may be noted herein that in the case of *M/S Magma Fincorp Ltd Vs Rajesh Kumar Tiwary* reported in (2020) 10 SCC 399, the Hon'ble Supreme Court has held that no criminal action against the financier can be initiated, if the vehicle is seized by them against nonpayment of installment as he repossessing the vehicle.

If we examine the present case, in the light of the observation made by the Hon'ble Supreme Court as noted above, this Court is left unimpressed that custodial interrogation of the applicants are required in the interest of investigation.

Mr. Konwar, learned Senior counsel for the applicants also assured this Court that the applicants will never threaten the informant in future.

Under the aforesaid facts and circumstances, this court is inclined to allow this petition. Accordingly, it is provided that on furnishing a bond of Rs.50,000/-each with one surety of like amount to the satisfaction of the arresting authority, the applicants shall be enlarged on pre arrest bail.

The above privilege is, however, subject to the following conditions:

1. That the applicants shall make himself available for interrogation by the Investigating Officer as and when required;
2. That the applicant shall not, directly or indirectly, make any

inducement , threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and

3. That the applicants shall not leave the jurisdiction of the learned CJM, Jorhat, without prior permission.

Case diary be returned.

JUDGE

Comparing Assistant