

GAHC010174052023



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

Case No. : AB/2772/2023

ASAP TAYE AND 2 ORS
S/O SRI NAGENSWAR @ NAGENDRA TAYE
R/O VILL- KAROIBARI
P.S. JONAI, DIST. DHEMAJI, ASSAM
PIN-787060

2: SRI SANGRAM DOLEY
S/O SRI NIRMAL DOLEY
R/O VILL- NO. 1 MAJILIPUR
P.S. JONAI
DIST. DHEMAJI
ASSAM
PIN-787060

3: SRI SITARAM KUMBANG
S/O SRI KABINDRA KUMBANG
R/O VILL- RAMDHAN MUKTIAR
P.O. RAMDHAN DIKHARI
P.S. SIMEN CHAPORI
DIST. DHEMAJI

PIN-78706

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MD. S M RAHMAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 13.09.2023

Heard Mr. S. M. Rahman, learned counsel for the petitioners. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent.

Scanned copy of the case record along with the Case Diary has been received and I have perused the same.

This is an application under Section 438 of the Code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/petitioners, who are apprehending arrest in connection with PRC Case No. 14/2023, under Sections 302/34 of the Indian Penal Code, which is pending before the Court of learned Sub-Divisional Judicial Magistrate (M), Jonai, Dhemaji.

It is submitted by the learned counsel for the petitioners, Mr. Rahman, that the petitioners are innocent and they are no way involved in the alleged offence. The police never searched for them in connection with this case and hence, they are not aware about the pendency of this case or the investigation made by the I.O. in connection with this case. The petitioners came to know about the case only after receiving summons from the learned Sub-Divisional Judicial Magistrate (M), Jonai, Dhemaji. As the accused/petitioners were shown absconder in the Charge-Sheet, the present petition has been filed seeking pre-

arrest bail and they are ready to appear before the Trial Court and contest the case if they are granted with the privilege of pre-arrest bail. The learned counsel for the petitioner further relied on a decision of Hon'ble Apex Court passed in **Mahdoom Bava Vs. Central Bureau of Investigation (Criminal Appeal arising out of SLP (Crl) No. 376 of 2023)**, wherein, it has been observed that *"more importantly, the appellants apprehend arrest, not at the behest of the CBI but at the behest of the Trial court. This is for the reason that in some parts of the country, there seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order. The correctness of such a practice has to be tested in an appropriate case. Suffice for the present to note that it is not the CBI which is seeking their custody, but the appellants apprehend that they may be remanded to custody by the Trial Court and this is why they seek protection. We must keep this in mind while deciding the fate of these appeals."*

In this context, the learned Additional Public Prosecutor, Mr. Sharma, has submitted that from the scanned copy of the record as well as the Case Diary, it reveals that finding sufficient incriminating materials against the present accused/petitioners along with others, the Charge-Sheet was filed against them. It also reveals from the Case Diary that the I.O. made house search of the accused/petitioner on several occasion, but they were evading the police arrest during the entire investigation of this case and hence, they were shown as absconder in connection with this case.

After hearing the submissions made by the learned counsels for both sides and also considering the materials available in the case record as well as the

Case Diary, it is seen that this is a case of mob lynching where the name of present petitioners were not mentioned in the F.I.R., but during investigation, the name of the accused/petitioners were brought in the investigation and accordingly, the Charge-Sheet was filed against them including others. Further it is seen that before showing them as an absconder in the Charge-Sheet, the police made several attempt to interrogate the accused/petitioners and in that context, their house search was also made, but the present petitioners were evading police arrest and thus, it cannot be held that they were not aware about the case which was registered against them under Sections 302/534 of the Indian Penal Code.

In view of the above aspects of the case, I do not find it a fit case to extend the privilege of pre-arrest bail to the accused/ petitioners. Rather, considering the fact that the accused/ petitioners have appeared before this Court after receiving summons from the Court, I hereby direct all the 3 (three) accused/petitioners, namely, (i) Shri Asap Taye (ii) Shri Sangram Doley & (iii) Shri Sitaram Kumbang, to appear before the learned Court below within 10 (ten) days from the date of this order with a proper application for bail, which will be considered by the learned Court below considering the conduct and other aspects of the case as well as materials in the Case Diary.

In terms of above, this anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant