

GAHC010177272023



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

Case No. : AB/2847/2023

AFJAL ALI AND 2 ORS
S/O MAYAN ALI
R/O VILL- BARBILA, P.O. AMAYAPUR, P.S. TAMALPUR, DIST. BAKSA,
ASSAM, PIN-781367

2: BAHUD ALI @ RAHUL
S/O MAFIJ UDDIN
R/O VILL- BARBILA
P.O. AMAYAPUR .S. TAMALPUR

DIST. BAKSA
ASSAM
PIN-781367

3: FAIJUL HAQUE @ FAIJULLY
S/O MAYAN ALI
R/O VILL- BARBILA
P.O. MAYAPUR
P.S. TAMALPUR

DIST. BAKSA
ASSAM
PIN-78136

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 07-09-2023

Heard Mr. A.R. Bhuyan, learned counsel for the petitioners. Also heard Mr. B. Sarma, learned Addl. P.P., Assam for the State respondent.

This application under Section 438 Cr.P.C. has been filed by the petitioners, namely, 1. Afjal Ali, 2. Bahud Ali @ Rahul and 3. Faijul Haque @ Faijully apprehending their arrest in connection with Tamulpur P.S. Case No. 147/2023 registered under Sections 120(B)/420/34 of the IPC.

The case diary has been received.

It is submitted by the learned counsel appearing for the petitioners that no one of the present petitioners are involved with the alleged offence. It is submitted that the allegations made in the FIR are false and concocted. However, the accused petitioners are ready to cooperate with the Investigating Officer. But, they are apprehending arrest and for which the present petition is filed seeking the privilege of pre-arrest bail.

In this context the learned Addl. P.P. has submitted that there is sufficient incriminating materials against the present petitioners in the case diary. More so, the Investigating Officer has submitted that during the course of investigation the notice under Section 41 A Cr.P.C. was also issued to the present petitioners but they have not appeared. It is further submitted that statement of one of the friends of the informant is also recorded under Section 161 Cr.P.C. who also implicate the petitioners. The informant also has given his statement under Section 164 Cr.P.C. before the judicial Magistrate.

The learned Addl. P.P. submitted that considering the materials available on record and the gravity of offence, custodial interrogation of the present petitioners may be necessary in the present case and hence objected to the prayer for bail stating that this is not a fit case for granting pre-arrest bail to the present petitioners.

After hearing the learned counsel appearing for both the parties and on perusal of the bail petition, it is seen that there is sufficient materials in the case diary showing the involvement of the present petitioners. More so, as per the report of the Investigating Officer the TIP may also be necessary for identification and custodial interrogation of the present petitioners will be required and also submitted that the present petitioners are also involved in other case which indicates that the present petitioners are the habitual offender.

Considering the submissions of learned counsel for both the sides and also considering the materials available in the case diary as well as the nature of offence, I find that this is not a fit case to grant privilege of pre-arrest bail to the present petitioners and accordingly, the same stands rejected.

The pre-arrest bail application is disposed of.

JUDGE

Comparing Assistant