

GAHC010196802023



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

Case No. : Bail Appln./3118/2023

FULCHAN KHAN @ PHULCHAN KHAN AND ANR
S/O BADSHA KHAN
R/O VILL- PAKABETBARI,
P.O. JARABARI
P.S. BARPETA
DIST. BARPETA, ASSAM
PIN-781314
MOBILE NO. 6001957323

2: NUR ISLAM
S/O LATE MANIK ALI
R/O VILL- PAKABETBARI

P.O. JARABARI
P.S. BARPETA
DIST. BARPETA
ASSAM
PIN-781314
MOBILE NO. 600195732

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A.I. AHMED

Advocate for the Respondent : SC, WILD LIFE PROTECTION

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

03.10.2023

Heard Mr A I Ahmed, learned counsel for the petitioners and Mr I Borthakur, learned counsel appearing on behalf of Special Public Prosecutor, Wildlife.

2. The petitioners, 1) Fulchan Khan @ Phulchan Khan and 2) Nur Islam, have filed this application under Section 439 CrPC, with a prayer for bail in connection with Case No. KR/OR/32/23 dated 24.07.2023, registered under Sections 9/39/49(B)/57/51 of the Wildlife (Protection) Act, 1972.

3. The petitioners were arrested in connection with this case on 24.07.2023. It is submitted on behalf of the petitioners that they are innocent. They were not aware that in the vehicle in which they were proceeding, being Maruti Suzuki Alto 500 bearing Registration No. AS-15J-3593, there was a Gecko inside the yellow bag that was carried by one Anar Hussain who hired the car and who falsely stated to the petitioners that he was carrying fish. It is submitted that Tokay Gecke (Scientific Name: *Gekko gekko*) was already seized by the 15th Battalion SSB, Kajolgaon and the *gecko* has been released in the Manas Forest Area. It is submitted that the petitioners will cooperate with the investigation and they have been languishing in jail for 71 days.

4. On the other hand, it is submitted on behalf of the Forest Department that petitioners have committed a serious offence and there is every possibility that they may commit similar offences of this nature. It is also submitted on behalf of the Forest Department that vide order dated 16.12.2021, in connection with Bail Application No. 3226 of 2021, in a similarly situated case, prayer for bail has been rejected to the accused, who was booked under Sections 9/27/29/31/39/44 (1) (a), punishable under Section 51 of the Wild Life (Protection) Act, 1972.

4. I have considered the submissions made at the Bar with circumspection. Offence

report has not yet been submitted. The petitioners are behind bars for more than 71 days.

5. I have also considered the length of detention. The investigation has progressed to a considerable extent. I have also considered the submission that the petitioners are local residents and they will cooperate with the investigation as well as the trial.

6. Considering all aspects and in view of my foregoing discussions, the petition is allowed. The petitioners are enlarged on bail of Rs. 50,000/- each with a suitable surety of the like amount to the satisfaction of the learned SDJM, Bijni, under the conditions that:-

- i) the petitioners will refrain from such activities with which they are alleged, failing which, bail order will be cancelled.

7. Bail Application stands disposed of.

JUDGE

Comparing Assistant