

GAHC010201122023



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

Case No. : AB/3082/2023

SUBRAT GOGOI AND 4 ORS
S/O LATE RAJEN GOGOI
PERMANENT RESIDENT OF VILL- BORBARI NAVAJYOTI GAON
P.O. BISHMILE (CHABUA)
DIST. DIBRUGARH, ASSAM
PIN CODE- 786184

2: SRI PUTUL DAS
S/O LATE RATNESWAR DAS
R/O VILL- ROHAMORIA BOROTICHUK GAON
P.O. GORPARA (DOKOM)
DIST. DIBRUGARH
ASSAM
PIN CODE- 786101.

3: SRI RANJIT DAS
S/OLATE BORGWERA DAS
R/O VILL- ROHAMORIA BOROTICHUK GAON
P.O. GORPARA (DIKOM)

DIST. DIBRUGARH
ASSAM
PIN CODE- 786101.

4: SRI PINKU DAS
S/O PRADIP DS
R/O VILL- ROHAMOTI BOROTICHUK GAON
P.O. GORPARA (DIKOM)
DIST. DIBRUGARH
ASSAM
PIN CODE- 786101

5: SRI DHANTI DAS
S/O DURNE DAS

R/O VILL- ROHAMOTI BOROTICHUK GAON
P.O. GORPARA (DIKOM)
DIST. DIBRUGARH
ASSAM
PIN CODE- 78610

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S BANIK

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

06.10.2023

Heard Mr. S. Banik, learned counsel for the applicants and also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. Apprehending arrest in connection with BIEO P.S. Case No.21/2023, under Section 120(B)/379/3411/119 IPC, this application, under Section 438 Cr.P.C., is preferred by five applicants, namely, (i) Shri Subrat Gogoi, (ii) Shri Putul Das (iii) Shri Ranjit Das, (iv) Shri Pinku Das and (v) Shri Dhanti Das, for grant of pre-arrest bail.

3. It is to be noted here that the above noted case has been registered on the basis of one FIR lodged by one Sanjib Kumar Goswami, Inspector of Police, BIEO, Assam on 25.08.2023.

4. The essence of allegation made in the said FIR is that on the basis of news item published in Axomia Pratidin on 04.03.2023, a preliminary enquiry was conducted by Shri

Amrit Ch. Kalita, Dy.S.P. CM's SVC, Assam and a report, vide PE No.05/2023, was submitted, which indicates that several persons, namely, Dandinath Missong, Dimbeswar Mipun, Memsura Missong, Mona Missong and Chandra Missong of Village Dadhiya, under Chabua P.S. are involved in smuggling timbers illegally from Dibru- Saikhowa National Park.

The report also indicates that several saw mills, namely, Khan Saw Mill, Santosh Kumar Dhelia Saw Mill, Raj Saw Mill, Rupai Saw Mill, Asu Das, Mukti Singh, Ramavater Saw Mill, Das & Das Saw Mill, which are set up on the river bank of Brahmaputra, near Dibrugarh Town, collects the logs from the river and transported it after sawing.

The report further indicates that one Pradip Medhi, Writuraj Buragohain, Raju medhi, Kalyan Sonowal, Mohan Sonowal, Hemanta Moran, Gunin Gogoi, Dharani Gogoi, Sanjoy Sharma and Wajid Khan of Tinsukia district have been running timber business covering Assam Arunachal border area. Further, the report indicates that local Forest Officials of Sadiya, Doom Dooma, Talap, Tinsukia, Dibrugarh, Guijan Range and Saikhowa Wildlife Range and Police Officials are aware about such illegal trade.

5. Mr. Banik, learned counsel for the applicants, submits that though this application is preferred by five applicants, yet, during pendency of this petition, two applicants, namely, Shri Pinku Das and Shri Dhanti Das were arrested by Police on 28.09.2023, and now this application is being presses for three applicants, namely, (i) Shri Subrat Gogoi, (ii) Shri Putul Das and (iii) Shri Ranjit Das only. Mr. Banik submits that the applicants are not named in the FIR and that they are being searched by Police and that they are innocent and no way involved with the offence alleged in the FIR. Mr. Banik also submits that the applicants are ready to co-operate with the investigating agency and their custodial interrogation may not be required in the interest of investigation and therefore, Mr. Banik contended to allow this petition.

6. Per contra, Mr. P. Borthakur, the learned Additional P.P. has vehemently opposed the petition. Producing the Case Diary before this court Mr. Borthakur submits that the I.O. has collected sufficient materials to show complicity of the applicants with the offences

alleged in the FIR and that their custodial interrogation is very much required in the interest of investigation to unearth the conspiracy and to arrest the co-accused. Mr. Borthakur also submits that there is indication in the case diary that due to illegal felling and smuggling of trees from Dibru Saikhowa Reserve Forest, the entire ecosystem is affected and it will have far reaching consequences upon the environment and also upon the society at large. Mr. Borthakur further submits that custodial interrogation of the applicants are very much necessary in the interest of investigation and therefore, it is contended to dismiss this petition.

7. Having heard the submission of 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. Borthakur, learned Additional P.P.

8. It is to be mentioned here that in the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and others**, reported in **(2011) 1 SCC 694**, specially to para 112, the Hon'ble Supreme Court had laid the parameters to be taken into consideration by the Court, while granting anticipatory bail, which are as follows:-

"122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences.
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- (vii) The courts must evaluate the entire available material against the accused very

carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

9. It appears from the case diary that the I.O. has collected sufficient incriminating materials in support of the allegation made in the FIR. The case diary indicates that the applicants are the owners of illegal saw mills; setup on the bank of river Brahmaputra at Niz Rahmoria village and during investigation, the I.O. had seized 65 numbers of timber logs and several other articles related to timber business such as chain saws and circular saw blades, belts etc. The case diary also indicates that investigation is in nascent stage and if the privilege of pre-arrest bail is extended to the applicants at this stage, it will misdirect the investigation and consequently, it would be difficult to apprehend the co-accused.

10. The case diary further indicates that due to illegal felling and smuggling of the trees from Dibru Saikhowa Reserve Forest and adjoining forests the entire ecosystem of the said locality is affected. And indisputably, it will have far reaching consequences upon the environment and consequently, the entire society will suffer. Mr. P. Borthakur, the learned Additional P.P., has rightly pointed this out during hearing, and there is substance in the same.

11. Having considered aforementioned facts and circumstances, and also having

considered the nature and gravity of the offence, and the punishment prescribed for the same, as well as the submission of learned Advocates for both the sides, and also in view of the observation, so made in the case of **Siddharam Satlingappa Mhetre** (supra) as discussed herein above, and the role played by the applicants, this Court is left unimpressed by the submission of Mr. Banik, learned counsel for the applicants, that custodial detention of the applicants are not warranted in this case. Their custodial interrogation is very much necessary in the interest of investigation i.e., to unearth the conspiracy and to apprehend the co-accused. Accordingly, striking a balance between the individual right of the applicants and that of the societal interest, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be extended to the applicants.

12. In terms of above, this anticipatory bail application stands rejected. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant