

GAHC010201142023



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

Case No. : AB/3096/2023

MD. NAJIR HUSSAIN AND 2 ORS
S/O LT. NURUL HUSSAIN
R/O VILL- MOWAMARI
P.S. SAMAGURI
DIST.NAGAON, ASSAM

2: SULEMAN ALI @ SULMAN ALI
S/O LT. NURUL HUSSAIN
VILL- MOWAMARI
P.S. SAMAGURI
DIST. NAGAON
ASSAM

3: AMBIA KHATUN
W/O AKBAR ALI
R/O BARMABIL
P.S. SAMAGURI
DIST. NAGAON
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

04.10.2023

Heard Mr. N. Uddin, learned counsel for the applicants and also heard Mr. K.K. Parasar, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. Apprehending arrest in connection with Samaguri P.S. Case No.267/2023, under Section 381 IPC, this application under Section 438 Cr.P.C. is preferred by three applicants, namely, Md. Najir Hussain, Suleman Ali @ Sulman Ali and Ambia Khatun, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of one FIR lodged by one Mrityunjoy Bhuyan on 28.08.2023. The essence of allegation made in the FIR dated 28.08.2023, is that the informant, who has been working in a private organisation, namely, Khargeswara Farms and Foods Private Limited has provided 1988 nos. of broiler poultry to Najir Hussain and Suleman Hussain @ Ali for rearing and out of which 109 nos of poultry died and the applicants have committed theft of remaining 1878 nos. of broiler poultry.

4. Mr. Uddin, learned counsel for the applicants submits that the applicants are innocent and they are no way involved with the offence alleged in the FIR and that they are ready to cooperate with the investigating agency and therefore, Mr. Uddin contended to allow this petition.

5. On the other hand, Mr. K.K. Parasar, learned Additional Public Prosecutor has produced the case diary before this Court and submits that the I.O. has collected sufficient materials in support of the allegation made in the FIR against the applicant No.1 Md. Najir Hussain. However, Mr. Parasar submits that the materials collected so far in the case diary are inadequate to show the complicity of the applicant Nos.2 and 3 with the offence alleged in the FIR. On a pointed query Mr. Parasar submits that the I.O. has

examined some witnesses and seized 22 nos. of broiler poultry and also seized some documents.

6. 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. Parasar, learned Additional P.P.

7. Having regards to the nature of accusation and the punishment prescribed for the same and also having regards to the materials collected so far in the case diary against the applicants, their custodial interrogation seems to be not necessary here in this case and therefore, this Court is inclined to allow this petition. It is provided that in the event of arrest of the applicants, namely, Md. Najir Hussain, Suleman Ali @ Sulman Ali and Ambia Khatun, in connection with Samaguri P.S. Case No.267/2023 under Section 381 IPC, they shall be enlarged on pre-arrest bail on their executing a bail bond of ₹ 50,000/- each, with one surety of the like amount to the satisfaction of the arresting authority. The above privilege is, however, subject to the following conditions:-

- (i) The applicants shall make themselves available for interrogation by the Investigating Officer as and when required;
- (ii) The applicants 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
- (iii) The applicants shall not leave the jurisdiction of the learned S.D.J.M.(M), Kaliabor, without prior permission.

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

9. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant