

GAHC010216592023



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

Case No. : AB/3312/2023

RASHIDUL HOQUE AND ANR
S/O MD. UMED ALI
R/O KANUAMARI KALONGPAR
P.S. SAMAGURI
DIST. NAGAON, ASSAM

2: NURUL HUSSAIN
S/O LATE MUSLIMUDDIN
R/O KANUAMARI KALONGPAR
P.S. SAMAGURI ,DIST. NAGAON, ASSA

VERSUS

THE STATE OF ASSAM ,REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 18-11-2023

Heard Mr. S. M. Abdullah P, learned counsel for the applicants and also heard

Ms.N. Das, learned Addl. P.P. for the State respondent.

Pursuant to order of this Court dtd. 16.11.2023, the I. O. concerned personally appeared before this Court and produced the case diary. Her personal appearance is dispensed with accordingly.

Apprehending arrest in connection with Samaguri P.S. Case No.25/2023, under Sections 120(B) /406/ 420 /34 IPC, this application under Section 438 Cr.P.C. is preferred by the applicants, namely, 1. Rashidul Hoque and 2 Nurul Hussain for grant of pre-arrest bail.

The aforementioned case has been registered on the basis of one FIR lodged by S. I. Tilak Phukan of Samaguri P.S on 20.1.2023.

The essence of allegation made in the FIR dated 20.1.2023, is that acting on a tip off, the informant and other police personnel conducted have apprehended four persons of Jharkhand and conducted search of their luggage, in presence of witnesses and recovered one piece of suspected gold boat weighing 1.853 kg and one small size steel sawing frame with four pieces of small size sawing blade (heksew) and seized the same preparing seizure list and the other person(seller) manage to escape from the place of occurrence and during preliminary interrogation, the apprehended persons have shown the houses of seller, and later on, they were identified as Rasidul Hoque, Mukshidul Islam and Nurul Hussain of village Kanuamari Kolongpar, Nagaon.

Mr. Abdulla, learned counsel for the applicant submits that though the case was registered u/s 120(B) /406/ 420 /34 IPC, yet, the offence u/s 406/420 IPC are not made out against the present accused persons and they have not cheated any person and they have also not been found in the place of occurrence and they are ready to cooperate with the investigating agency and

therefore, it is contended to allow this petition.

On the other hand, Ms. N. Das learned Addl. P.P. has produced the case diary before this court and submits that some materials are collected against the applicants, by the I.O., in support of the allegation made in the FIR, and therefore, Ms. Das, has opposed the petition.

Having heard the 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 assistance of Ms. Das, learned Addl. P.P. for the State respondent.

Case diary indicates that except the statement of the co-accused, the I.O. could not collect any materials in support of the allegation made in the FIR. No one has alleged about cheating and committing criminal breach of trust. Having regards to the above, and also having regards to the nature and gravity of the offence, this Court is inclined to allow this petition. Accordingly, it is provided that in the event of arrest of the applicants, in connection with, Samaguri P.S. Case No.25/2023, under Sections 120(B) /406/ 420 /34 IPC, the applicants shall be enlarged on pre arrest bail, on their executing a bond of Rs.50,000/-each with one surety of like amount to the satisfaction of the arresting authority,

The above privilege is, however, subject to the following conditions:

1. That the applicants shall make themselves available for interrogation by the Investigating Officer as and when required;
2. That 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

3. That the applicants shall not leave the jurisdiction of the learned CJM, Nogaon, without prior permission.

Case diary be returned.

JUDGE

Comparing Assistant