

GAHC010216982022



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

Case No. : AB/3147/2022

BHANITA DAS SAHANI AND ANR.
W/O SRI RAJ SAHANI
R/O HOUSE NO. 15,
RNC PATH, HATIGAON,
P.S. HATIGAON
DIST. KAMRUP (M), ASSAM

2: RAJ SAHANI @ RAJ KUMAR SAHANI
S/O LT. KABILASH SAHANI
R/O HOUSE NO. 15
RNC PATH
HATIGAON

P.S. HATIGAON

DIST. KAMRUP (M)
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S MUNIR

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 16-02-2023

Heard Mr. S. Munir, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State of Assam.

This is an application under Section 438 of the Code of Criminal Procedure, praying for grant of pre-arrest bail to the accused/petitioners, who are apprehending arrest in connection with Garchuk P.S. Case No. 302/2022, under Sections 420/379/411 of the Indian Penal Code.

Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioners, Mr. S. Munir, that the present accused/petitioners took the godown, from where the tea bags were recovered, on rent from one Madhucharan Pathak. But, subsequently, the petitioners sublet the said godown to one Amod Kumar Shah by a deed of agreement, executed before the Notary, and the godown, from where the tea bags were stated to be recovered, were in possession of the said Amod Kumar Shah. The present accused/petitioners are no way related with the alleged offence and the godown was not under their possession at the time of the alleged offence. The petitioners have already appeared before the I.O. and their

statements have also been recorded under Section 161 Cr.P.C. Further, the petitioners are the permanent resident of their addressed locality and hence, there is no chance of absconding, rather they are ready to co-operate with the I.O. in the investigation of the case if they are granted with the privilege of pre-arrest bail.

In this context, the learned Additional Public Prosecutor, Mr. P. Borthakur, has submitted that both the accused/petitioners have already appeared before the I.O. and their statements have been recorded under Section 161 Cr.P.C. In the Case Diary, 2 (two) agreements are available, from which it reveals that the actual owner of the said godown is one Madhucharan Pathak, who give the entire godown to the present accused/petitioner on rent for Rs. 10,000/- per month. But, subsequently, another agreement was executed by the petitioner No. 1 with one Amod Kumar Sah, to whom the godown was sublet. But, the I.O. could not record the statement of the said Amod Kumar Sah till date, though the statement of Madhucharan Pathak has already been recorded.

At this stage, the learned counsel for the petitioner has submitted that there may be violation of any tenancy agreement, but the petitioners are no way involved in the alleged offence. More so, all the tea bags, which were stated to be stolen, have already been recovered by the I.O.

After considering the submissions of learned counsel for both sides, conduct of the accused/petitioners and also considering the materials available in the Case Diary, I find that the custodial interrogation of the present

accused/petitioners may not be necessary in the interest of further investigation and accordingly, the interim pre-arrest bail order, dated 31.10.2022, is hereby made absolute in the same terms and conditions.

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

The Case Diary be sent back.

JUDGE

Comparing Assistant