

GAHC010223042022



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

Case No. : AB/3234/2022

MONALISHA SARMAH CHALIHA AND ANR
W/O MR. GAUTAM CHALIHA
R/O HOUSE NO. 46, NABAKIRAN APARTMENT,
MOTHER TERESA ROAD,
GUWAHATI,
P.S. GEETANAGAR,
DIST. KAMRUP (M), ASSAM
PIN-781021

2: MR GAUTAM CHALIHA
S/O LATE DILIP KUMAR CHALIHA
R/O HOUSE NO. 46
NABAKIRAN APARTMENT
MOTHER TERESA ROAD
GUWAHATI
P.S. GEETANAGAR
DIST. KAMRUP (M)
ASSAM
PIN-78102

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 19-01-2023

Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Ms. R. Kakati, learned counsel for the petitioners and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioners viz. [1] Mrs. Monalisha Sarmah Chaliha and [2] Mr. Gautam Chaliha have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Gorchuk Police Station Case no. 318/2022, registered under Sections 420/467/468/471/379, Indian Penal Code [IPC].

3. The petitioners were granted interim protection by order dated 04.11.2022 with a further direction to them to appear before the Investigating Officer [I.O.] of the case within 10 [ten] days from 04.11.2022. Mr. Choudhury, learned Senior Counsel has submitted that pursuant to the order dated 04.11.2022, the petitioners have appeared before the I.O. of the case and on their appearance, the I.O. of the case has recorded their statements. Mr. Sarma, learned Additional Public Prosecutor who has received the case diary, has also admitted about the appearance of the petitioners before the I.O. of the case in deference to the order dated 04.11.2022.

5. The First Information Report [FIR] was lodged on 21.10.2022 by a Sub-Inspector of Police, attached to Gorchuk Police Station. As per the FIR, the Police Station received a reliable information on 21.10.2022 to the effect that one Oil Tanker, bearing registration no. WB-41/J-7638 [the subject-vehicle] was carrying HSD Oil from Meghalaya to West Bengal illegally. After registering General Diary Entry no. 786/2022, a police team was detailed. The police team detailed for the purpose, intercepted the vehicle at Gorchuk Chariali and on inspection, found that the subject-vehicle was loaded with 29,000 litres of HSD Oil. It was

suspected that the consignment of HSD Oil was stolen from Meghalaya and it was being transported to M/s. Coal Mines Associated Trades Private Limited Sonepur, West Bengal. The driver and two other persons were apprehended.

6. Mr. Choudhury, learned Senior Counsel for the petitioner has submitted that the petitioner no. 1 is the owner of a Petrol & Diesel filling station named M/s Megha Service Station, located at 10th Mile, Mawsmi, Ri-Bhoi District and the petitioner no. 2 who is the husband of the petitioner no. 1, manages the affairs of the said filling station. By referring to the invoice dated 20.12.2022, he has submitted that the consignment of 29,000 litres of HSD Oil was loaded in the subject-vehicle in favour of M/s Coal Mines Associated Trades Private Limited following all due formalities. It is submitted by Mr. Choudhury that there is no allegation from any quarter that the 29,000 litres of HSD Oil was stolen from anywhere. He has submitted that on sale of HSD Oil, all taxes were paid by purchaser as the tax component is loaded in the diesel retail price. It is further submitted that there is no restriction in the inter-State transportation of HSD Oil and therefore, if any offence has been made out, the same is a bailable offence within the meaning of Section 23 of the Petroleum Act, 1934, for which simple imprisonment extending upto 3 [three] months or fine extending upto Rs. 500/-, or both is prescribed.

7. I have perused the materials available in the case diary. From the case papers appended to the bail application, it appears that the petitioner no. 1 is the licensee of the petroleum and diesel filling station named M/s Megha Service Station, located at 10th Mile, Mawsmi, Ri-bhoi district. From the invoice dated 20.10.2022, it transpires that a quantity of 29,000 litres of HSD Oil was sold to M/s Coal Mines Associated Traders Pvt. Ltd., District – Paschim Bardhaman, West Bengal for consideration. In absence of any complaint received to the effect that the said quantity of HSD is stolen from any quarter or in the absence of any *prima facie* materials that the said quantity of HSD Oil is an object of crime, I find force in the submissions advanced on behalf of the petitioners.

8. The petitioners have already been provided interim protection by order dated

04.11.2022 with conditions mentioned therein. There is no material to indicate that the petitioners have misused the liberty granted to them on 04.11.2022 by violating any of the conditions, mentioned therein. Pursuant to the interim order, both the petitioners have appeared before the I.O. of the case, meaning thereby, they have already joined the investigation.

9. Having regard to the above fact situation obtaining in the case and considering the fact that both the petitioners have joined the investigation by appearing before the I.O. of the case, this Court is of the considered view that the custodial interrogation of the petitioners appear not necessary for the purpose of carrying out further investigation of the case and accordingly, the interim bail granted to the petitioners by order dated 04.11.2022, is made absolute, subject to the condition nos. [1], [2], [3], [4], and [6] already set forth in the said order dated 04.11.2022.

10. The application for bail stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant