

GAHC010224892023



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

Case No. : AB/3462/2023

ASRAFUL ISLAM AND 2 ORS
S/O ABDUL HAMID
R/O VILL- DALBARI
P.S. AND DIST. MORIGAON, ASSAM

2: SAJARUL HOQUE
S/O VILL- PATUAKATA
P.S. MIKIRBHETA

MORIGAON

3: SARIFUDDIN ALI
S/O FAKARUDDIN ALI
R/O VILL- DANDUA
P.S. AND DIST. MORIGAO

VERSUS

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

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

16.10.2023

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

2. This application, under Section 438 Cr.P.C. is preferred by three applicants, namely, Asraful Islam, Sajarul Hoque and Sarifuddin Ali, who have been apprehending arrest in connection with Morigaon P.S. Case No.334/2023, under Section 379/411 IPC read with Section 11(1) of the Prevention of Cruelty to Animals Act read with Section 13(1) of the Assam Cattle Preservation Act, 2021, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by S.I. Bitupan Saikia of Morigaon P.S. on 16.09.2023. The essence of allegation made in the aforesaid FIR is that acting on a tip off, the informant with other staff have apprehended one Truck, bearing Registration No.AS-21C-9975 on 15.09.2023 at about 9:18 p.m. and during checking they have found 24 nos. of cattle, being carried in the vehicle without documents and apprehended one Faruk Ahmed, driver of the vehicle.

4. Mr. Chutia, learned counsel for the applicants submits that the seized cattle were purchased by one Sahjahan Ali on 15.09.2023, from Balisatra Half-Weekly Market and to that effect he has referred some documents, which are being annexed at page-16 to 33 and that the applicants are no way involved with the offence alleged in the FIR and they have been engaged by the owner of the cattle for carrying the cattle from the market to Rangia and that they are ready to cooperate with the investigating agency and therefore, it is 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 there is some materials

against the applicant No.1 Asraful Islam, but there is no material against the other two applicants, namely, Sajarul Hoque and Sarifuddin Ali in the case diary. Mr. Parasar further submits that the applicant No.1 Asraful Islam has paid paid money to the driver for carrying the cattle in the vehicle apprehended by police.

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. The case diary indicates that the I.O. has collected some materials against the applicant No.1 Asraful Islam, but the case diary failed to disclose any legally prosecutable culpability of the applicant Nos.2 and 3. Further, having seen the role played by the applicant No.1 and also having regards the nature and gravity of the offence and the punishment prescribed for the same as well as the submission of learned Advocates of both the parties, custodial interrogation of the present applicants seems to be not warranted here in this case and therefore, this Court is inclined to grant the privilege of pre-arrest bail to the applicants. Accordingly, it is provided that in the event of arrest of the applicants, namely, Asraful Islam, Sajarul Hoque and Sarifuddin Ali, in connection with Morigaon P.S. Case No.334/2023, under Section 379/411 IPC read with Section 11(1) of the Prevention of Cruelty to Animals Act read with Section 13(1) of the Assam Cattle Preservation Act, 2021, they shall be released on pre-arrest bail on their executing a 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 C.J.M., Kamrup(M),

without prior permission.

8. In terms of above, this anticipatory bail application stands disposed of. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant