

GAHC010225182023



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

Case No. : Bail Appln./3581/2023

HITESWAR BARMAN AND 2 ORS.
S/O ATUL BARMAN
R/O VILL- KHALISAMARI
P.O. BHOWRAGURI
P.S. GOSSAIGAON
DIST. KOKRAJHAR, BTR, ASSAM
PIN-783370

2: SRI NIBASH BARMAN
S/O RAMENDRA BARMAN
R/O VILL- JUNKUBARI
P.O. KASHIKOTRA
P.S. SIDLI
DIST. CHIRANG
ASSAM
PIN-783373

3: SRI MANU DHAR BARDHAN
S/O KANAK BARDHAN
R/O VILL- SIDHAKHOWA
P.O. ROWATA
P.S. ROWTA
DIST. UDALGURI
ASSAM
PIN-78450

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S K SARKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

18.10.2023

Heard Mr. S.K. Sarkar, learned counsel for the accused and also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under section 439 Cr.P.C. is preferred by three accused, namely, Hiteswar Barman, Nibash Barman and Manu Dhar Bardhan, who have been languishing in jail hazot since 15.06.2023, in connection with Kachugaon P.S. Case No.18/2023, under Section 384/506 IPC read with Section 66(F) of the I.T. Act, read with Section 10/13/16/17 of the Unlawful Activities (Prevention) Act, 1967, for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by one Kanak Das on 17.03.2023. The essence of allegation made in the aforesaid FIR is that on 17.03.2023, at about 12:20 p.m. he has received one demand notice from Kamatapur Liberation Organisation (KLO) demanding a sum of ₹ 5,00,000/- in the WhatsApp of his mobile phone and he was asked to make payment of the amount within a period of 10 days and similar demand was also made to some other persons of Gurutela market, under the Kachugaon P.S. area.

4. Mr. Sarkar, learned counsel for the accused persons, submits that the accused persons have been languishing in jail hazot since 15.06.2023, for last 125 days and that they are no way involved with the offence alleged in the FIR and that they will cooperate with the investigating agency and therefore, it is contended to allow the petition. Referring to an order dated 22.08.2023, of the learned Special Judge, Kokrajhar (page-

27), Mr. Sarkar submits that vide aforementioned order the learned Special Judge, Kokrajhar, has extended the period of detention of one Nibash Barman, Ajit Namo Das, Sasti Laskar, Santanu Mohan Ray, Narayan Barman and Manudhar Bardhan for another period of 90 days, but rejected the prayer of one Uttam Ray, Krishna Kanta Ray, and Bipul Ray, but, the I.O. has not prayed for extension of the period of detention in respect of accused Hiteswar Barman and that till date no charge-sheet has been submitted and as such, the accused Hiteswar Barman is entitled to default bail and therefore, it is contended to allow the petition.

5. On the other hand, Mr. D. Das, learned Additional Public Prosecutor has produced the case diary before this Court and submits that the accused Hiteswar Barman is the member of the KLO and he himself admitted the same before the I.O. and the other two accused, namely, Nibash Barman and Manu Dhar Bardhan had collected phone numbers and used to send WhatsApp messages to the public demanding money for KLO and therefore, Mr. Das contended to dismiss the petition.

6. Having heard the submission of learned Advocates for both the 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. Das, learned Additional P.P.

7. It is not in dispute that the accused persons are behind the bar since 15.06.2023 and that the period of detention in respect of the accused Nibash Barman and Manu Dhar Bardhan was extended by the learned Special Judge, Kokrajhar, vide order dated 22.08.2023, but no such extension of the period of detention beyond 90 days had been made in respect of the accused Hiteswar Barman. Admittedly, he is languishing in jail hazot for more than 90 days and admittedly no charge-sheet has been submitted by the I.O. till date.

8. In view of above, this Court is of the considered opinion that accused Hiteswar Barman is entitled to default bail under Section 167(2) Cr.P.C. Accordingly, it is provided that on furnishing a bond of ₹ 50,000/- (Rupees Fifty Thousand) with one surety of like amount, to the satisfaction of the learned Special Judge, Kokrajhar, the accused Hiteswar

Barman be enlarged on bail.

9. Further, considering the period of detention and also considering the materials collected so far against the other accused, namely, Nibash Barman and Manu Dhar Bardhan, this Court is of the view that their further custodial detention may not be required in the interest of investigation and therefore, this Court is inclined to allow their prayer also. It is provided that on furnishing a bond of ₹ 50,000/- (Rupees Fifty Thousand) each, with one surety of like amount, to the satisfaction of the learned Special Judge, Kokrajhar, the accused, namely, Nibash Barman and Manu Dhar Bardhan be enlarged on bail.

10. In terms of above, this petition stands disposed of. The case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant