

GAHC010226772023



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

Case No. : Bail Appln./3606/2023

MD. SAIJUDDIN ALI AND ANR
S/O LATE AMIR ALI
R/O GHOGRAMARA PATHAR
P.S. CHAYGAON
DIST. KAMRUP, ASSAM

2: MD. KHALILUDDIN ALI
S/O MD. SAMSUL HAQUE
R/O NATUNKATHMI
P.S. BOKO
DIST. KAMRUP (R)
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S HOQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 14.11.2023

Heard Mr. S. Hoque, learned counsel for the petitioners. Also heard Mr. B.

B. Gogoi, learned Additional Public Prosecutor for the State.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, Md. Saijuddin Ali and Md. Khaliluddin Ali who are detained behind the bar since 11.09.2023 (since last 65 days) in connection with Dergaon P.S. Case No. 147/2023 under Section 395 of the Indian Penal Code.

The gist of accusation against the present petitioners is that on 02.09.2023, one Ramashankar Jaiswal lodged an FIR before the Officer-in-Charge of Dergaon Police Station, *inter alia*, alleging that on 01.09.2023 his vehicle bearing Registration No. AS-01-LC-3777 loaded with 132 bags of Shikhar Pan Masala and 33 bags of Zarda that the total value of which is stated to be Rs.33,67,692/- (Rupees Thirty Three Lakhs Sixty Seven Thousand Six Hundred and Ninety Two) was forcefully taken away by some dacoits. On receipt of the said FIR, Dergaon P.S. Case No. 147/2023 under section 395 Indian Penal Code.

Learned counsel for the petitioner has submitted that the petitioners are not named in the FIR and they are not involved in any manner in the offence alleged in the FIR.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Dergaon P.S. Case No. 147/2023 and has submitted that there are incriminating materials against both the petitioners and has opposed the grant of bail to the present petitioners at this stage on the ground that some of the co-accused are yet to be arrested.

I have considered the submissions made by learned counsel for both sides and has perused the materials on record including the case diary of Dergaon P.S. Case No. 147/2023.

On perusal of the case diary, it appears that there are incriminating materials

against the above named petitioners, however, their statement under Section 161 of the Code of Criminal Procedure, 1973 has been recorded by the Investigating Officer and the Investigating Officer has also recorded the statement of some of the witnesses and the stolen vehicle has been seized. It also appears that the petitioners are detained behind the bar since last 65 days.

Considering the progress made in the investigation as well as length of detention already undergone by the above named petitioners, their further custodial detention does not appear to be necessary for fair completion of the trial, if they cooperate with the Investigating Officer in completion of the investigation.

In view of the above, both the above named petitioners are hereby allowed to go on bail of Rs.40,000/- (Rupees Forty Thousand) each with one surety of like amount, subject to the satisfaction of learned Chief Judicial Magistrate, Golaghat with following conditions:-

1. That the petitioners after their release on bail shall appear before the Investigating Officer of Dergaon P.S. Case No. 147/2023 every week for next two weeks or till the investigation is completed whichever is earlier and shall cooperate in the investigation.

With the above observation, this bail application is disposed of.

JUDGE

Comparing Assistant