

GAHC010228182023



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

Case No. : AB/3452/2023

GAYATRI KAPUR
D/O ASHOK PRADHAN,
VILL.- PACHIM DADARA, P.O.- DADARA, P.S.- HAJO, DIST.- KAMRUP,
ASSAM.

VERSUS

THE STATE OF ASSAM
BEING REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR J PAYENG

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

09.10.2023

Heard Mr. J. Payeng, learned counsel for the applicant and Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with **Hajo P.S. Case No. 566/2023**, under Sections 188/406/353 of the IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant namely, **Gayatri Kapur** for grant of pre-arrest bail.

3. The said case has been registered on the basis of one F.I.R., lodged by OC of Palashbari PS, namely, Arup Pathak, on 15.09.2023. The essence of allegation made in the FIR is that in connection with Palashbari PS Case No. 129/2023, under Sections 350/411 of the IPC, read with Section 13 of the Assam Cattle Preservation Act and read with Section 11 of the Prevention of Cruelty to Animal Act, all total 18 cattle were seized and the same were given in the interim custody of the Gushala of Dhyan Foundation, for temporary care and protection, located at Mandakata and thereafter, on 17.05.2023, learned Sessions Judge, Kamrup [R] at Amingaon has passed an order directing the IO to give zimma of 18 numbers of cattle to the owners and the said order was communicated to the Dhyan Foundation authority, but in spite of receiving the said order, Dhyan Foundation had failed to release the aforesaid cattle in the custody of the owners and thereby violated the court's order and delivery of public service.

4. Mr. Payeng, learned counsel for the applicant submits that against the order of the learned Sessions Judge, dated 17.05.2023, the authority of Dhyan Foundation has preferred one Criminal Petition, being Criminal Petition No. 988/2023, and in the said petition, this Court vide order dated 18.09.2023, has stayed the order dated 17.05.2023, passed by the learned Sessions Judge and as such, the applicant has not handed over the seized cattle in the custody of the owner. Mr. Payeng further submits that no case under Sections 188/406/353 of the IPC is made out, against the applicant and that she is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Borthakur, learned Additional Public

Prosecutor, submits that as the impugned order passed by the learned Sessions Judge, has already been stayed by this Court, this anticipatory bail application may be disposed of, even without calling for the case diary.

6. Having heard the submissions of learned Advocates of both sides, I have carefully perused the petition as well as the documents placed on the record and also perused the impugned order dated 17.05.2023, passed by the learned Sessions Judge, in Criminal Revision Petition No. 12/2023 and the order dated 18.09.2023, passed by this Court, in Criminal Petition No. 988/2023.

7. It appears that vide order dated 18.09.2023, this Court has stayed the operation of the order dated 17.05.2023, passed by the learned Sessions Judge, Kamrup [Amingaon].

8. In view of above, it cannot be said that the offence under Sections 188/406/353 of the IPC, is made out against the applicant and therefore, this Court is inclined to allow this petition.

9. Accordingly, it is provided that in the event of arrest of the applicant, in connection with **Hajo P.S. Case No. 566/2023**, under Sections 188/406/353 of the IPC, she shall be enlarged on pre-arrest bail on executing a bond of Rs. 50,000/- only, with one surety of like amount to the satisfaction of the arresting authority.

10. The above privilege is, however, subject to the following conditions:

(i) that the applicant shall make herself available for interrogation by the Investigating Officer as and when required;

(ii) that the applicant 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 her from disclosing such facts to the Court or to any police officer; and

(iii) that the applicant shall not leave the jurisdiction of the learned **Chief Judicial Magistrate, Kamrup [R] at Amingaon**, without prior permission.

11. In terms of above, this AB stands disposed of.

Comparing Assistant

JUDGE