

GAHC010231262023



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

Case No. : AB/3475/2023

MD. HASHMAT ALI AND ANR
S/O JALAL UDDIN
R/O JILEWMARI
P.O. TELIACHAPARI, SAMAGURI
DIST. NAGAON, ASSAM

2: ASHRAFUL ISLAM
S/O USMAN GANI
R/O JILEWMARI
P.O. TELIACHAPARI
SAMAGURI
DIST. NAGAON
ASSA

VERSUS

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

Advocate for the Petitioner : MR A DEKA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

09.11.2023

Heard Mr. A. Deka, learned counsel for the applicants and also heard Mr. K.K. Das,

learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. Apprehending arrest in connection with Khetri P.S. Case No.159/2023, under Section 379/411/34 IPC, this application under Section 438 Cr.P.C. is preferred by two applicants, namely, Md. Hashmat Ali and Ashraful Islam, 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 one Kamal Bora, Constable of Khetri P.S. 07.09.2023. The essence of allegation made in the aforesaid FIR is that acting on a tip off they have apprehended two vehicles on 07.09.2023 at about 9:20 p.m., bearing Registration Nos.AS-01QC-7779 and AS-01QC-7053 (TATA INTRA), but the drivers of the vehicles managed to escape and on checking the vehicles they found 33 nos. of cattle being carried in the said vehicles.

4. Mr. Deka, learned counsel for the applicants submits that the applicants are the owners of the two seized vehicles, bearing Registration Nos.AS-01QC-7779 and AS-01QC-7053 and that they are no way involved with the offence alleged in the FIR and they are ready to cooperate with the investigating agency and therefore, Mr. Deka contended to allow this petition. Mr. Deka further submits that the cattles were carried in the said vehicles with all relevant documents and they may produce the same before the I.O. concerned for verification.

5. On the other hand, Mr. K.K. Das, learned Additional Public Prosecutor has produced the case diary before this Court and submits that the I.O. has examined two witnesses till date and though the I.O. has examined two witnesses, yet he has failed to collect incriminating materials against the present applicants.

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. Das, learned Additional P.P.

7. In view of the materials collected so far in the case diary and also having regards to the nature of accusation and the punishment prescribed for the same, this Court is of

the view that custodial interrogation of the applicants seems to be not warranted here in this case and therefore, this Court is inclined to allow this petition. It is provided that in the event of arrest of the applicants, namely, Md. Hashmat Ali and Ashraful Islam, in connection with Khetri P.S. Case No.159/2023, under Section 379/411/34 IPC, they shall be enlarged 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.
9. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant