

GAHC010239512022



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

Case No. : AB/3461/2022

SUSILA SARAF
W/O SURESH KUMAR SARAF @ BINOD KUMAR SARAF
R/O WARD NO. 14,
KHELMATI, P.S. NORTH LAKHIMPUR, DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR M HOQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

18.01.2023

Heard Mr. M. Hoque, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Susila Saraf has approached this Court seeking the benefit of pre-arrest bail,

apprehending her arrest, in connection with North Lakhimpur Police Station Case no. 526/2022 registered for offences punishable under Sections 120B/447/435/436/438/427, Indian Penal Code [IPC].

3. The informant in the First Information Report [FIR], lodged on 28.09.2022, has named one Md. Nasir Hussain as the prime accused and two other unknown persons with him. The allegations are to the effect that the accused persons after unauthorizedly entering into the business premises of the informant, M/s Robin Show Mill at Khelmati, set a number of vehicles, belonging to the informant, on fire by using Diesel, Kerosene, etc. Though his office was also set on fire, the fire brigade team reached the place in time and managed to douse the fire, albeit with some damages. As a result, the informant incurred a loss of Rs. 1,30,00,000/- due to the damages caused to the vehicles, properties, etc.

4. Mr. Sarma, learned Additional Public Prosecutor who has produced the case diary, has submitted that in the fire, a number of vehicles got substantially damaged and burnt. Moreover, there were eye-witnesses who had seen the 2 [two] persons viz. Md. Md. Nasir Hussain and Suresh Kumar Saraf who had set the vehicles and the offices of the informant at fire in the nigh hours intervening 27.09.2022 and 28.09.2022, in running away from the place of occurrence.

5. The materials in the case diary go to indicate that the 2 [two] accused persons viz. Md. Nasir Hussain and Suresh Kumar Saraf @ Binod Kumar Saraf had different grudges against the informant. The accused person, Md. Nasir Hussain was a former employee under the informant and the informant charging him for committing theft, scolded him in public and terminated his service. The other accused person, Suresh Kumar Saraf @ Binod Kumar Saraf has a claim of ownership in respect of the plot of land where M/s Robin Show Mill is located and where the vehicles of the informant were parked. The materials further go to indicate that the accused person, Suresh Kumar Saraf @ Binod Kumar Saraf has a grudge that he has been denied the rent for the property and the same are used to be appropriated by his elder brother. The statement of the other arrested accused person has corroborated the same. The materials in the case diary also go to indicate that the present petitioner was also a part of the conspiracy hatched by the other two arrested accused persons and she was aware of the

impending action planned by the two arrested accused persons.

6. The details of the vehicles burnt in the incident of fire are as follows :- [1] One Excavator [JCB], bearing registration no. AR-01/L-4498, Chassis no. HAR3DXUE02580061, Engine no. H00159523 in the name of Jyoti Prasad Hazarika; [2] One Eicher Dumper, bearing registration no. AS-07/AC-2445, Chassis no. MC2L4GRC0HA006071, Engine no. 71A84359321 in the name of Jyoti Prasad Hazarika; [3] One 12 wheeler Truck, bearing registration no. AS-07/AC-0823, Chassis no. MAT466429GHD05902, Engine no. S0382461D84298428391 in the name of Jyoti Prasad Hazarika; [4] One 12 wheeler Truck, bearing registration no. AS-07/C-4486, Chassis no. MAT466385C2A02520, Engine no. B591803121A63228913 in the name of Md. Azizur Rahman; and [5] One Tata Dumper, bearing registration no. AS-07/AC-9725 Chassis no. MAT479182K3D09945, Engine no. ISBE59230409106378007 in the name of Hemanta Gogoi.

7. The petitioner was granted interim protection on 24.11.2022 with the further direction to her to appear before the Investigating Officer [I.O.] of the case within 5 [five] days from 24.11.2022. The learned counsel for the petitioner has submitted that the petitioner has appeared before the I.O. of the case in deference to the order dated 24.11.2022. The learned Additional Public Prosecutor has also submitted that the petitioner has appeared before the I.O. of the case and on her appearance, the I.O. of the case has recorded her statement under Section 161, CrPC, which is available in the case diary.

8. Having regard to the nature of role attributed to the petitioner in the act of setting the business premises of the informant on fire; the facts that the petitioner was not amongst the accused who had played any direct role in the act of setting the business premises of the informant on fire; and that the petitioner has already appeared before the I.O. of the case and has, thereby, joined the investigation, this Court is of the considered view that custodial interrogation of the petitioner is not necessary for the purpose of carrying out further investigation of the case and her release on pre-arrest bail, at this stage of investigation, is unlikely to bring any adverse effect in the further investigation of the case, provided she continues to extend her assistance and co-operation in the further investigation of the case.

9. Accordingly, the interim protection granted to the petitioner by order dated 24.11.2022, is made absolute, subject to the following conditions :-

[i] the petitioner shall cooperate with the investigation and shall thereafter, make herself available as and when her presence is required by the I.O. in the investigation of the case;

[ii] the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any witness 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] the petitioner shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.

10. The bail application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant