

GAHC010244762023



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

Case No. : AB/3677/2023

MD. KASEM ALI AND ANR
SON OF MD. MOHAR ALI, RESIDENT OF VILLAGE/ TOWN - RANA NAGAR,
P.O- URIAMGHAT, P.S - URIAMGHAT, DISTRICT- GOLAGHAT, ASSAM

2: MD. JUNAB ALI
SON OF MD. MOHAR ALI
RESIDENT OF VILLAGE/ TOWN - RANA NAGAR
P.O.- URIAMGHAT
P.S- URIAMGHAT
DISTRICT- GOLAGHAT
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.

Advocate for the Petitioner : MR. K BORUAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 23-11-2023

Heard Mr. M. Alam, learned counsel for the petitioners. Also heard Mr. B. Sharma, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, 1. Md. Kasem Ali and 2. Md. Junab Ali, who are apprehending their arrest in connection with Golaghat P.S. Case No. 233/2023 under Section 120B/379/411/413/420/468/284 of the Indian Penal Code.

The gist of accusation against the present petitioners is that on 21.09.2023, one Jatin Borah of Golaghat Police Station has lodged an FIR before the Officer-In-Charge of Golaghat Police Station, *inter-alia*, alleging that on receipt of a secret information through reliable source regarding movement of some illegal goods, a NAKA checking was laid at Tetelital, Golaghat and during the NAKA checking operation one vehicle bearing Registration No. AS-01-QC-2883 was intercepted which was coming from Uriamghat side and during search of the said vehicle, it was found loaded with dry corianders and the driver and the handyman of the said vehicle were able to show some documents regarding the said items, namely, dry corianders.

However, later on, during further search of the said vehicle it was found that several bags of Areca Nuts were concealed beneath the dried corianders and sesame and for the said areca nuts the driver and the handyman could not produce any documents when the same was asked from them.

It was found that the total number of Areca Nuts bags which were recovered from the said vehicle was 95.

It is further alleged in the FIR that the said Areca Nuts are suspected to be stolen and it is being carried with the help of the present petitioners, namely, 1. Md. Kasem Ali and 2. Md. Junab Ali.

On the other hand, learned counsel for the petitioners submits that the petitioners are in no way involved in the offence alleged in the FIR and they are

not connected with the offence alleged in any manner and they have been implicated in this case only because of the statement of the co-accused made against them which is false.

On the other hand, Additional Public Prosecutor has produced the case diary of Golaghat P.S. Case No. 233/2023 which was called for in connection with this case and has submitted that both the apprehended accused petitioners, who were the driver and the handyman of the seized truck have implicated the present petitioners in their statement recorded under Section 161 of the Code of Criminal Procedure, 1973.

It is further submitted that the seized Areca Nuts are suspected to be stolen. It is also submitted that the investigation is in its crucial stage and the seized Areca Nuts have also been sent to the Directorate of State Public Health.

Learned Additional Public Prosecutor has opposed the grant of bail to the present petitioners on the ground that there are incriminating materials against the petitioners in the case diary.

I have considered the submissions made by the learned counsel for both sides, and have perused the materials available in the case diary.

It appears from the case diary that in the FIR it is suspected that the seized Areca Nuts are stolen.

It further appears that it is only on the statement of the co-accused which were recorded under Section 161 of the Code of Criminal Procedure, 1973 that the present petitioners have been implicated in this case.

At this stage, apart from the statement of the co-accused there are no other materials against the present petitioners on record.

Under such circumstances, if the present petitioners co-operate with the Investigating Officer in the investigation, their custodial detention does not

appear to be necessary for the sake of fair completion of the investigation at this stage.

Hence, both the above-named petitioners is hereby directed to appear before the Investigating Officer of Golaghat P.S. Case No. 233/2023 within a period of 10(ten) days from the date of this order and co-operate in the investigation. If they do so within the stipulated period of time, in the event of their arrest in connection with Golaghat P.S. Case No. 233/2023, they shall be allowed to go on interim bail of Rs. 30,000/- each with a suitable surety of like amount to the satisfaction of the arresting authority, subject to the following conditions:-

(i) that the petitioners shall not directly or indirectly make any inducement threat or promise to the victim or to any other persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court; and

(ii) that the petitioners shall co-operate in the investigation.

With the above observations, this anticipatory bail application is hereby disposed of.

Send back the case diary.

JUDGE

Comparing Assistant