

GAHC010251932022



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

Case No. : AB/3657/2022

ARIF HUSSAIN AND 3 ORS .
S/O- BADSHAH MIA

2: BADSHAH MIA
S/O- LATE NIZAMUDDIN

3: NARJINA KHATUN
W/O- ARIF HUSSAIN

4: ANWAR HUSSAIN @ AKKEL DEWANI
S/O- LATE NIZAM UDDIN

AL ARE R/O- DIGJANI

P.S- KALGACHIA. DIST- BARPETA
ASSA

VERSUS

THE STATE OF ASSAM .
REP. BY PP, ASSAM

Advocate for the Petitioner : MR. I U CHOWDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 24-01-2023

Heard Mr. H.R.A Choudhury, learned senior counsel for the petitioner.

Also heard Ms. N. Das, learned Additional Public Prosecutor for the State of Assam.

Apprehending arrest in connection with Kalagachia P.S. Case No. 204/2022, under sections 341/323/353/427/506 of IPC, this application under section 438 Cr.P.C., has been preferred by the accused petitioners 1.Arif Hussain, 2. Badshah Mia , 3. Narjina Khatun and 4. Anwar Hussain @ Akkel Dewani, for granting pre-arrest bail.

It is submitted by the learned counsel for the petitioners that all the petitioners are innocent and have not committed any such offence as alleged in the F.I.R. There is a matrimonial dispute between the accused petitioner No. 1 with his wife due to failure of giving maintenance. For which, a non-bailable warrant of arrest issued against him and some police personal visited his house to execute the warrant of arrest and harass the petitioner as well as other family members. Thereafter, an altercation took place amongst them. It is submitted by the learned counsel for the petitioners that the petitioners have not committed any offence of obstructing the police personal or assaulting the police personal. The police made out false case against the aforementioned petitioners. The petitioner Nos. 2, 3 and 4 were on interim pre-arrest bail vide order dated 09.12.2022 and accordingly, they have appeared before the I.O and their statement under section 161 Cr.P.C were also been recorded. These three accused petitioners are ready to co-operate with the I.O in further investigation of the case, if they are granted with the privilege of pre-arrest bail. However, the petitioner No. 1. Arif Hussain was not granted interim pre-arrest bail and apprehending arrest, he could not appear before the I.O to give his statement.

But he is ready to co-operate with the I.O in further investigation of the case, if the privilege of pre-arrest interim bail is also granted to him.

In this context, learned APP has submitted that the petitioner No. 2, 3 and 4 appeared before the I.O after obtaining interim pre-arrest bail and the I.O has recorded their statements under section 161 Cr.P.C. All these three accused petitioners denied their involvement with the alleged offence and gave their statement accordingly.

Considering, the submission of learned counsels for both sides as well as nature of the allegations, I find it is a fit case where the privilege of pre-arrest bail can be granted to the accused petitioners namely, 2. Badshah Mia, 3. Narjina Khatun and 4. Anwar Hussain @ Akkel Dewani. Accordingly, interim pre-arrest bail granted to the accused petitioner namely, 2. Badshah Mia , 3. Narjina Khatun and 4. Anwar Hussain @ Akkel Dewani, vide order dated 09.12.2022, is hereby made absolute.

On the other hand, in the case of accused petitioner No. 1 1.Arif Hussain, there is sufficient incriminating materials against him in the case diary and his custodial interrogation may be necessary for just and proper investigation of the case. Therefore, at this stage, I do not find it proper to grant the accused petitioner No. 1.Arif Hussain with the the privilege of pre-arrest bail. Accordingly, the bail prayer of accused petitioner namely Arif Hussain is rejected at this stage.

With above observations, the present anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant