

GAHC010252912022



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

Case No. : AB/3665/2022

JABBAR ALI AND ANR
S/O- ARFAN ALI, R/O- VILL- PURBALOWASHUR, 248, BHAWANIPUR ROAD,
NEAR L.P. SCHOOL, MAJ GAON, P.S. AND DIST.- BARPETA, ASSAM, PIN-
781313

2: INAMUL HOQUE SIKDAR
S/O- JALAL UDDIN SIKDAR
R/O- VILL- ANANDAPUR
MAJ GAON
P.S. BARPETA
DIST.- BARPETA
ASSAM
PIN- 78131

VERSUS

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

Advocate for the Petitioner : MD A RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 19-01-2023

Heard Mr. I. Hussain, learned counsel for the petitioners and Mr. P.

Borthakur, learned PP for the State of Assam.

This is an application under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail to the petitioners, who are apprehending arrest in connection with Azara P.S. Case No. 100/2022, under Sections 420/406/34 IPC.

Case Diary is received and the same has been perused.

It is submitted by Mr. I. Hussain, the learned counsel for the petitioners that both the petitioners are innocent and the institution, namely, A. J. College of Pharmacy, is not a fake institution, as stated in the FIR., but it is a registered institution under the Maruthi Group of Institution and approved by Pharmacist Council of India, Delhi. Moreso, the said institution has entered into an agreement with the petitioner No. 1 and a photocopy of the said agreement is also furnished along with the petition as Annexure-2. The present FIR has been lodged with some false and concocted allegation against the petitioners only with a grudge that they were not allowed some candidates to sit in the examination as they were not found eligible as per criteria. It is further submitted that the petitioners are ready to co-operate the I.O. in further investigation of the case, if they are granted with the privilege of interim pre-arrest bail.

In this context, Mr. P. Borthakur, learned PP submits that there is sufficient materials against the petitioners in the Case Diary and from the statements of the witnesses as well as students, it reveals that the petitioner No. 1 have misappropriated crores of money from the students

in the name of admission and also collected their original certificates etc., and were not returned back to the students, for which also they have lost their academic year. The learned PP, further, submits that the agreement which has been annexed by the petitioners as Annexure-2 cannot be considered to be a genuine one and it is seen that the petitioner No. 1 has entered into the agreement only on his personal strength and as per Clause-12, the first party i.e. the Maruthi Group of Institutions is to maintain confidentiality of all the information regarding business, work, practices and sources of students of 2nd party to the petitioner No. 1 to anybody directly or indirectly without any approval from the 2nd party. So the question arises as to why such terms and conditions had to be incorporated in the agreement if the petitioner No. 1 has genuinely entered into an agreement in the name of Institution. Accordingly, the learned PP has submitted that it is not a fit case to extend the privilege of pre-arrest bail to the present petitioners and their custodial interrogation may be necessary to unearth some other facts involved in this case.

The learned counsel for the petitioners further submitted that similar kind of FIR was lodged against the petitioner No.1 which was registered as Azara P.S. Case No. 27/2022 under Section 420/406/34 IPC and the learned Addl. Sessions Judge, Kamrup (M) has already granted the privilege of pre-arrest bail to the petitioner No.1 and accordingly, considering the present case in the same footing, the petitioners may be granted with the privilege of pre-arrest bail.

It is seen from the Annexure No.8 i.e. the bail order, dated

11.03.2022 furnished along with the petition, whereby, the learned Addl. Sessions Judge, Kamrup (M) has granted interim pre-arrest bail fixing the matter on 20.03.2022 for Case Diary but the final order passed by the learned Addl. Sessions Judge, Kamrup (M) is not furnished with the petition. Moreso, from the order, itself, it reveals that one more case is lodged against the petitioner No. 1 with the same set of allegation.

Considering the submissions of learned counsel for both the sides and considering the materials available in the Case Diary as well as the nature and gravity of the offence and the bail objection by the I.O., custodial interrogation of the petitioner No. 1 may be required for the interest of just investigation of the case. Hence, I find that this is not a fit case to extend the privilege of pre-arrest bail to the petitioner No.1.

In view of the above, this anticipatory bail application stands rejected in respect of petitioner No. 1, namely, Jabbar Ali.

However, considering the materials in the Case Diary, I find that petitioner No.2, namely, Inamul Hoque Sikdar can be extended with the privilege of pre-arrest bail. Accordingly, in the event of arrest of the petitioner No. 2, namely, Inamul Hoque Sikdar in connection with Azara P.S. Case No.100/2022 under Section 420/406/34 IPC, he shall be released on bail on his furnishing a bond of Rs.20,000/- with one surety of like amount to the satisfaction of the arresting authority.

However, the above privilege of pre-arrest bail in respect of petitioner No. 2, namely, Inamul Hoque Sikdar shall be subject to the

following conditions:-

- (i) that the petitioner No.2 shall make himself available for interrogation by the Investigating Officer as and when required;*
- (ii) that the petitioner No.2 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) that the petitioner No.2 shall not leave the jurisdiction of the concerned jurisdictional Magistrate, without prior permission.*

Case Diary be returned, forthwith.

JUDGE

Comparing Assistant