

GAHC010260892022



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

Case No. : Bail Appln./3519/2022

ABDUS SUBUR CHOUDHURY AND ANR
S/O FOIZ UDDIN @ ABDUL KHALIK CHOUDHURY,
R/O VILL- PUB DHANIRAM PATHAR,
P.S. HOJAI
DIST. NAGAON, ASSAM

2: HASINA BEGUM
W/O ABDUS SUBUR CHOUDHURY
R/O VILL- PUB DHANIRAM PATHAR
P.S. HOJAI
DIST. NAGAON
ASSAM

VERSUS

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

Advocate for the Petitioner : MR P SONOWAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 09-01-2023

Heard Mr. A. Deka, learned counsel for the accused-petitioners and Mr. B.

Sharma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 439, Code of Criminal Procedure, 1973, the accused-petitioners viz. [1] Abdus Subur Choudhury and [2] Hasina Begum have prayed for their release on bail in connection with Hojai Police Station Case no. 398/2022, registered for offences under Sections 457/380/395/399/402, Indian Penal Code [IPC].

3. The accused-petitioners were arrested and produced before the Court of learned Chief Judicial Magistrate, Sankardev Nagar, Hojai on 09.11.2022 and on being so produced, they were remanded to custody.

4. The First Information Report was lodged on 10.09.2022 wherein the informant has stated that during the night intervening 09.09.2022 and 10.09.2022, some miscreants entered into his house by breaking the grills of the house and took away Agarwoods stored inside his house. The worth of Agarwoods, according to the informant, was of about 10 [ten] lakhs. The informant has further informed that the entire incident was captured in the CCTV installed in his house premises.

5. Mr. Sharma, learned Additional Public Prosecutor has submitted that the investigation initiated on 10.09.2022 is still in progress and is not concluded as on date resulting into a final report/charge sheet.

6. I have perused the materials available in the case diary including the statements of the arrested accused persons. From the statements of the accused persons, it has appeared that the accused-petitioner no. 1 herein was instrumental in persuading the other accused persons who committed the crime in the house of the informant, to commit the crime. The materials go to indicate that on the date of the incident, the accused-petitioner no. 1 after carrying them

in a vehicle, dropped the other accused persons near the house of the informant in the night and as per his instructions, the other accused persons had executed the crime by house breaking. In the course of investigation, a part of the stolen Agarwoods was recovered from the possession of a number of accused persons. From the materials in the case diary, it is noticed that the role attributed to the accused-petitioner no. 2 is about assisting the accused-petitioner no. 1 in carrying out the crime. It was on the basis of the CCTV footages of the cameras installed in the residence of the informant, the trails of the accused persons were found and they were thereafter, arrested. From the materials in the case diary, it has emerged that the crime was committed in the residence of the informant in an organized manner. The incriminating articles/objects seized, by the seizure lists, from the possession of the arrested accused persons, corroborate the accusation about the commission of the alleged crime where goods worth several lakhs had been looted. After committing the crime i.e. the theft of Agarwoods, the accused persons had also sold a part of the stolen Agarwoods to different accused persons in exchange of consideration. The sequence of events that have emerged from the materials in the case diary, go to indicate that the crime was committed in an organized and pre-planned manner and the present accused-petitioner no. 1 has emerged as the mastermind of the entire operation. The statements under Section 161, CrPC are relevant in considering the *prima facie* case against an accused person in an application for grant of bail in case of a crime which is organized and carried out in a co-ordinated manner.

7. Considering the respective roles played by the accused-petitioner no. 1 and the accused-petitioner no. 2 in the crime; the accused-petitioner no. 1 having emerged as the mastermind in carrying out the crime; and in view of the

availability of ample incriminating materials against the accused-petitioner no. 1, I am of the considered view that the prayer for bail in respect of the accused-petitioner no. 1 cannot be allowed at this stage of investigation as a number of other accused persons who assisted the accused-petitioner no. 1 in carrying out the crime are still at large. In such view of the matter, the prayer for bail of the accused-petitioner no. 1 stands rejected.

8. Having considered the role attributed to the accused-petitioner no. 2 and the period of detention of her detention since 09.11.2022, this Court is of the considered view that custodial detention of the accused-petitioner no. 2 for any further period for the purpose of carrying out further investigation appears not necessary and if the accused-petitioner no. 2 is released on bail, at this stage of investigation, further investigation of the case is not likely to be prejudicially affected, provided the accused-petitioner no. 2 continues to extend her assistance and cooperation in the further investigation of the case.

9. Accordingly, the accused-petitioner no. 2 is allowed to be enlarged on bail on furnishing a bail bond of Rs. 50,000/- with two sureties of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Sankardev Nagar, Hojai, subject to the following conditions :-

[1] The accused-petitioner no. 2 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;

[2] The accused-petitioner no. 2 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 him from disclosing such facts to the court or to any police officer;

[3] The accused-petitioner no. 2 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;

[4] The accused-petitioner no. 2 shall maintain law and order and they shall not commit an offence similar to the offence of which she accused of or of the commission of which she is suspected; and

[5] The accused-petitioner no. 2 shall regularly remain present during the trial and co-operate the Court to complete the trial for the above offences, if charge sheeted in the case.

This application stands disposed of in the afore-mentioned terms.

JUDGE

Comparing Assistant