

GAHC010262032022



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

Case No. : AB/3749/2022

MATIUR RAHMAN AND ANR
S/O MEHER ALI
VILL- FAKIRAGRAM, PAKRITAL
P.S. FAKIRAGRAM
DIST. KOKRAJHAR, BTAD, ASSAM

2: JABBAR ALI
S/O LT. BABUR RALI
VILL- FAKIRAGRAM
PAKRITAL
P.S. FAKIRAGRAM
DIST. KOKRAJHAR
BTAD
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S RANA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 17-01-2023

Heard Mr. S. Rana, learned counsel for the petitioners and Mr. B. Sharma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioners viz. [1] Matiur Rahman @ Matiyar Rahman and [2] Jabbar Ali have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Bharalumukh Police Station Case no. 341/2022, registered for offences punishable under Sections 363/366/365, Indian Penal Code [IPC].

3. In the First Information Report [FIR], the informant, Babul Ali, has *inter alia* alleged that his minor daughter, aged about 16 years, had been kidnapped by the accused persons, named in the FIR on 02.12.2012. One Monir and his parents along with other unknown persons have been arraigned as accused in the FIR. The informant has also made accusations that the accused persons had made demands for ransom with a threat that in the event of non-payment of the ransom amount of Rs. 10,00,000/- for release of his minor daughter, the victim girl would be raped and murdered.

4. The learned Additional Public Prosecutor has produced the concerned case diary.

5. From the materials in the case diary, collected during the course of investigation carried out so far, it has emerged that the two petitioners are co-villagers of the accused persons, named in the FIR. When they came to know

that a minor girl was allegedly kidnapped by the accused persons, a meeting of the villagers was called at the instance of the father of the accused who had allegedly kidnapped the minor girl, i.e. Abdul Ali and the meeting was held on 03.12.2022. It was decided in the said meeting by the co-villagers wherein the two petitioners were also present, to hand over the allegedly kidnapped minor girl to police/her parents and these two petitioners were entrusted with the responsibility to hand over the minor daughter to her family. The materials in the case diary go to indicate that these two petitioners had no role in the alleged kidnapping of the minor girl or her alleged confinement in the subsequent period.

6. The two petitioners were provided interim protection by order dated 21.12.2022 with a further direction to appear before the Investigating Officer [I.O.] of the case within 7 [seven] days from 21.12.2022. The learned counsel for the petitioners has submitted that both the petitioners have appeared before the I.O. of the case in compliance of the order dated 21.12.2022. The learned Additional Public Prosecutor has submitted that the two petitioners have appeared before the I.O. of the case and their statements are available in the case diary.

7. Having regard to the absence of incriminating materials against the two petitioners in respect of the alleged kidnapping of the minor girl or her alleged confinement in the subsequent period and the fact that the two petitioners have already joined the investigation by appearing before the I.O. of the case, this Court is of the considered view that custodial interrogations of the two petitioners for the purpose of carrying out further investigation of the case are not necessary and their release on pre-arrest bail, at this stage of investigation,

is not likely to bring any adverse effect in the further investigation of the case, provided they continue to extend their assistance and co-operation in the further investigation of the case.

8. Accordingly, the interim protection granted to the petitioners by order dated 21.12.2022, is made absolute, subject to the following conditions :

[i] the petitioners shall co-operate with the investigation and make themselves available for interrogation whenever required by the Investigating Officer (I.O.) of the case;

[ii] the petitioners 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;

[iii] the petitioners 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;

[iv] the petitioners shall maintain law and order and they shall not commit an offence similar to the offence of which they are accused, or of the commission of which they are suspected; and

[v] the petitioners 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.

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

JUDGE

Comparing Assistant