

GAHC010265992023



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

Case No. : AB/4002/2023

MAHAMMAD ALI AND ANR
S/O LATE HASEN ALI
R/O VILL- BAHABARI
P.S. KHARUPETIA
DIST. DARRANG, ASSAM

2: JULFIKKAR @ MD. JULFIQUAR ALI
S/O HABIBUR RAHMAN
R/O VILL- BAHABARI
P.S. KHARUPETIA
DIST. DARRANG
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR J C BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 24.11.2023

Heard Mr. J. C. Borah, learned counsel for the petitioners. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State.

This application under Section 438 of the Code of Criminal Procedure,

1973, has been filed by petitioner, namely, Mahammad Ali and Julfikkar @ Md. Julfikur Ali who are apprehending their arrest in connection with the PRC Case No.913/2022, corresponding to Laharighat P.S. Case No. 655/2021, under Section 366 of the Indian Penal Code, pending before the learned Sub-Divisional Judicial Magistrate (S), Morigaon, for granting pre-arrest bail.

Learned counsel for the petitioners has submitted that on the basis of an FIR, which was filed by one Rabbul Islam on 02.10.2021, investigation was conducted and after completion of the investigation, the charge-sheet was laid against the present petitioners, showing him as on bail in the charge- sheet.

The learned counsel for the petitioners further submits that now the petitioners has received summons from the Court of learned Sub-Divisional Judicial Magistrate (S), Morigaon and the next date of appearance is fixed on 21.12.2023. However, the learned counsel has submitted that they apprehend that on his appearance before the learned Trial Court, he may not be allowed to go on bail, as the charge-sheet has been laid against him under Section 366 of the Indian Penal Code, which is an offence which is exclusively triable by the Court of Sessions.

I have also heard the learned Additional P.P., Assam and perused the materials available in the case record including the annexure, annexed with the bail application.

On perusal of the materials available in the case record, it appears that the charge-sheet has been laid against the accused/petitioners under Section 366 of the Indian Penal Code and it also appears that the committal Court has issued only summons to the present petitioners.

However, the apprehension of the petitioners that they may not be allowed to go on bail, as the offence involves in this case is exclusively triable by

the Court of Sessions does not have legal basis, as the maximum punishment for the offence under Section 366 of the Indian Penal Code is ten (10) years and fine. Therefore, the embargo of Section 437(1)(i) of the Code of Criminal Procedure, 1973 would not be applicable in the instant case, as the said embargo is applicable only for those offences, where the maximum punishment is either death penalty or imprisonment for life.

In the instant case, the committal Court would be well within its limits, if it considers the application for bail of the present petitioners and release him on bail if it finds reasons to do so.

For the reasons mentioned above, this anticipatory bail application is disposed of with an observation that the petitioners may appear before the learned committal Court, on the next date fixed in compliance of the summons received by the petitioners and may pray for bail before the learned committal Court as there is no embargo in considering and allowing such a bail application by the learned committal Court.

This anticipatory bail application is accordingly disposed of.

JUDGE

Comparing Assistant