

GAHC010273112023



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

Case No. : AB/4096/2023

ABDUL JALIL CHOUDHURY AND ANR
S/O LATE ALIM UDDIN CHOUDHURY
PERMANENT RESIDENT OF HATILARUA PATHAR
P.O. TENGAGURI, P.S. BURAGAON
DIST. MORIGAON, ASSAM-781022

2: MOJIBUN NESSA
W/O LATE RIYAZ ALI
R/O MILAN PATH

JURIPAR
P.S. DISPUR
GUWAHATI
DIST. KAMRUP (M)
ASSA

VERSUS

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

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

18.12.2023

Heard Mr. H.R.A. Choudhury, learned Senior Counsel, assisted by Mr. M.J. Quadir, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor, Assam.

This application under section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, 1. Abdul Jalil Choudhury and 2. Mojibun Nessa, who are apprehending their arrest in connection with Dispur P.S. Case No. 1158/2023.

The gist of accusation in this case is that on 23.06.2023, one Mofida Ahmed has lodged an FIR before the Officer-In-Charge of Dispur Police Station against one Munu Begum and some unknown persons, *inter-alia*, alleging that certain land documents were forged by the present petitioner in order to grab 2 Katha 15 Lechas of land let by Late Ahidur Rahman.

Learned Senior Counsel for the petitioners has submitted that Late Ahidur Rahman had executed a gift deed in favour of one Musstt. Munu Begum and in which the present petitioner has put his signature as the witness and beyond that he does not have any role of any kind in the allegations leveled against in the FIR.

On the other hand, learned Additional Public Prosecutor has also submitted that the statement of the petitioner has already been recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure, 1973. However, he may further be required for the purpose of investigation.

Learned Senior Counsel for the petitioners has submitted that both the

petitioners have appeared before the Investigating Officer and their statement are also recorded by the Investigating Officer. However, they are still apprehending that they may now be arrested in connection with Dispur P.S. Case No. 1158/2023.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Dispur P.S. Case No. 1158/2023 and has submitted that though the statement of both the petitioners has been recorded by the Investigating Officer, however, there are sufficient materials against the petitioner No. 1, namely, Abdul Jalil Choudhury, who is the main accused of having committed alleged forgery of the gift deed in question.

The learned Additional Public Prosecutor says that though he does not have any objection against making the anticipatory bail absolute in connection with petitioner No. 2, Mojibun Nessa, however, he has strong objections against grant of bail to the petitioner No. 1, namely, Abdul Jalil Choudhury.

It appears that in this case, the main allegation was against one Munu Begum who has already been released on anticipatory bail by this Court. It also appears from the copy of the gift deed which is annexed along with the bail application that the petitioner No. 1 has signed there as witness No. 1, along with one Tamiz Ali, who has also been allowed to go on anticipatory bail. Further, considering the fact that the statement of the present petitioner has already been recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure, 1973, if the present petitioner co-operates in the investigation, his custodial detention does not appear to be necessary for fair completion of the investigation of Dispur P.S. Case No. 1158/2023.

In view of above, the above named petitioners are hereby directed to appear before the Investigating Officer of Dispur P.S. Case No. 1158/2023 within

a period of 10(ten) days from the date of this order and to co-operate in the investigation. If they do so within the stipulated period of time, in the event of their arrest in connection with Dispur P.S. Case No. 1158/2023, they shall be allowed to go on interim bail of Rs. 30,000/- each with a suitable surety of like amount to the satisfaction of the arresting authority with a condition that they shall continue to co-operate in the investigation.

With the above observation, this anticipatory bail application is hereby disposed of.

Send back the case diary.

JUDGE

Comparing Assistant