

GAHC010273792023



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

Case No. : AB/4114/2023

DEWANAND CHIRANIA AND 3 ORS
S/O LT. HULASH CHAND CHIRANIA R/O GAURIPUR WARD NO. 3 PO AND
P.S. GAURIPUR DIST DHUBRI ASSAM PIN 783331

2: OM PRAKASH CHIRANIA
S/O LT. HULASH CHAND CHIRANIA R/O GAURIPUR WARD NO. 3 PO AND
P.S. GAURIPUR DIST DHUBRI ASSAM PIN 783331

3: DAULAT RAM CHIRANIA
S/O LT. HULASH CHAND CHIRANIA R/O GAURIPUR WARD NO. 3 PO AND
P.S. GAURIPUR DIST DHUBRI ASSAM PIN 783331

4: SWEETY CHIRANIA
W/O DAULAT RAM CHIRANIA R/O GAURIPUR WARD NO. 3 PO AND P.S.
GAURIPUR DIST DHUBRI ASSAM PIN 78333

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. D P BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 22-12-2023

Heard Mr. DP Borah, learned counsel for the petitioners as well as Mr. KK Das, learned APP for the State. Also heard Mr. N. Alam, learned counsel for the informant victim who has also filed an objection to the prayer for grant of bail.

2. The petitioners, namely, (1) Dewanand Chirania, (2) Om Prakash Chirania, (3) Daulat Ram Chirania and (4) Sweety Chirania, who are apprehending arrest in connection with Dispur P.S. Case No. 2214/2023 under sections 448/354/325/365/34 I.P.C., have filed this application under section 438 Cr.P.C., for pre-arrest bail.

3. As per the FIR lodged on 26.11.2023, the petitioners had entered into the house of the informant and had assaulted them and took away the son of the informant at around 10:30 a.m. on 26.11.2023.

4. The learned APP has produced the case diary.

5. Before referring to the case diary, the Court is inclined to record that the stand of the petitioners in this case is that they had picked up the son of the informant from the house of the informant and took him to Bharalumukh police station on an allegation that some money was stolen by him. On being asked, the learned counsel for the informant has submitted that the name of his son who was taken to Bharalumukh Police Station was Manish Jain.

6. The petitioners projects that on 26.11.2023, the petitioner no.3, namely, Daulat Ram Chirania had submitted an information dated 26.11.2023 to the Officer-in-Charge of Bharalumukh Police Station seeking permission to go to

the house of Manish Jain. Moreover, it is projected that after informing the police, the petitioners went to the house of the informant and picked up her son.

7. On a perusal of the case diary it appears that pursuant to notice under section 41A Cr.P.C., the petitioners have been examined by the IO and their statement as well as the statement of the victim has been recorded.

8. From the statement of the petitioners before the IO, it appears that not only the victim was taken to Bharalumukh Police Station, but from there he was taken to Gauripur and in the meanwhile the police personnel from Agia Police Station had intercepted the vehicle and the victim was recovered.

9. Therefore, it appears that there is quite a high-handedness in the action of the petitioners who had taken the law in their own hands and had kidnapped the victim from the house of the informant allegedly with consent and connivance with the Officer-in-Charge of Bharalumukh Police Station and then he was taken to Bharalumukh Police Station and then shifted to Gauripur and in the meantime in view of the FIR lodged, the vehicle was intercepted at Agia police station and the victim was finally recovered. Therefore, it is clearly demonstrated that the petitioners have the ability of taking the law in their own hands with active connivance of the police personnel. It may be stated here that the residence of the informant is not situated within the territorial jurisdiction of Bharalumukh Police Station. Such a high-handed approach is definitely not in public interest or interest of justice because the Court cannot put its seal of approval to a private citizen being empowered to catch hold of a citizen, brand him as an alleged accused and then kidnap him and take wherever he wants.

This action of the petitioners defies the rule of law and cannot be encouraged. Therefore, notwithstanding that the petitioners have appeared before the IO and their statement have been recorded, but their conduct discloses that they are acquainted with the police personnel. This, in the considered opinion of the Court, disentitles the petitioners of pre-arrest bail.

10. Under the circumstances, as narrated above as the Court finds the petitioners having a connection with the police station which is outside the jurisdiction of the residence of the informant, they can inform the police that they are going to pick up a person, and then take law in their own hands by kidnapping a boy aged about 19 years and take him to a different district and jurisdiction. Therefore, not only the Court finds the petitioners to be disentitled to pre-arrest bail, but it also appears to the Court that this incident is also required to be examined in a different jurisdiction of this Court.

11. Therefore, notwithstanding that the petitioners have appeared before the IO and statements have been recorded, but the act of kidnapping in connivance with the police is found to disentitle the petitioners to a pre-arrest bail. Accordingly, prayer for a pre-arrest bail is refused and rejected.

12. Let this matter be examined by the Registry of this Court and the act of connivance of the petitioners with the police personnel of Bharalumukh Police Station, who had allowed kidnapping of a person from his house in Guwahati and taking him to Gauripur is required to be taken by the Court in appropriate jurisdiction as a *suo moto* matter.

13. Accordingly, let this order and the record be brought to the notice of the

Registrar (Judicial) to examine whether the *suo moto* cognizance of the issue of kidnapping can be taken up by this Court which has been done as stated by the petitioners, which *prima facie* appears to have been done in connivance with the Bharalumukh Police Station.

14. Let a copy of this order be also sent to the Director General of Police, Assam as well as to the Secretary, Govt. of Assam, Home Department to examine the matter at their level.

15. The prayer for bail is refused.

16. Case diary is returned.

JUDGE

Comparing Assistant