

GAHC010000742024



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

Case No. : AB/7/2024

ABDUL MOTALIB @ MD MUTALIB ALI AND ANR
S/O AKKAR ALI
R/O VILL- BHUMURAGURI
P.O. BHOJKHOWA CHAPORI
P.S. TEZPUR
DIST. SONITPUR, ASSAM

2: SAHARUL HASSAN @ MD. SHAHARUL ALI
S/O SAMSUL ISLAM
R/O VILL- BHUMURAGURI
P.O. BHOJKHOWA CHAPORI
P.S. TEZPUR
DIST. SONITPUR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MD. I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

11.01.2024

Heard Mr. I. Hussain, learned counsel for the applicants and Mr. P.S.

Lahkar, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with the **Dalgaon P.S. Case No. 411/2023**, under Section 379 of the IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicants namely, **Abdul Motalib @ Md. Mutalib Ali and Saharul Hassan @ Md. Shaharul** for grant of pre-arrest bail.

3. The said case has been registered on the basis of one F.I.R. lodged by one Abdur Rahman, on 25.12.2023. The essence of allegation made in the FIR is that on 24.12.2023, at about 2:30 am, he along with his staff intercepted one Baleno vehicle in front of the house of Manohar Ali, without registration number and recovered two numbers of cattle from the same.

4. Mr. Hussain, learned counsel for the applicants submits that the applicant No. 1 is the owner of the vehicle and applicant No. 2 is the cousin brother of the applicant No. 1 and that the driver namely, Rafiq Ali had taken his vehicle without his knowledge. Mr. Hussain further submits that they are innocent and no way involved with the offence alleged in the FIR and that they are ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, by producing the Case Diary before this Court, Mr. Lahkar, learned Additional Public Prosecutor has opposed the application and submits that the materials collected so far in the case diary, reveals the complicity of the applicants with the offence alleged in the FIR, and their custodial interrogation is necessary in the interest of investigation and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I

have carefully gone through the petition as well as the documents placed on record and also perused the Case Diary produced before this Court, with the assistance of learned Additional Public Prosecutor.

7. In view of the materials collected so far in the case diary and the nature of accusation as well as the punishment prescribed for the same and also considering the submissions of learned counsel of both sides, this Court is of the view that custodial interrogation of the applicants may not be required, in the interest of investigation. Therefore, this Court is inclined to allow this petition

8. Accordingly, it is provided that in the event of arrest of the applicants, in connection with the **Dalgaon P.S. Case No. 411/2023**, under Section 379 of the IPC, they shall be enlarged on pre-arrest bail, on their executing a bond of Rs. 50,000/- each only, with one surety of like amount to the satisfaction of the arresting authority.

9. The above privilege is, however, subject to the following conditions:

(i) that the applicant shall make themselves available for interrogation by the Investigating Officer as and when required;

(ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade their from disclosing such facts to the Court or to any police officer; and

(iii) that the applicant shall not leave the jurisdiction of the learned **Chief Judicial Magistrate, Darrang, Mangaldai**, without prior permission.

10. Case diary be returned.

JUDGE

Comparing Assistant