

GAHC010018542024



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

Case No. : Bail Appln./302/2024

KHWRWMSHAR BRAHMA @ KHURWMSHAR BRAHMA AND ANR
S/O- SURESH CHANDRA BRAHMA, R/O VILL-KASHIBARI P/S DHALIGAON
DIST CHIRANG ASSAM

2: BIRKHAT NARZARY @ BIRKHAT NARJARY
S/O- PANIRAM NARZARY
R/O- VILL- MAREGAON
P.O. JARKONA
P.S. TAMULPUR
DISTRICT- BAKSHA
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REP BY PP ASSAM

2:THE FOREST DEPARTMENT
REPRESENTED BY THE SC
FOREST DEPARTMENT
ASSA

Advocate for the Petitioner : MR. M I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 05-02-2024

Heard Mr. M.I. Hussain, learned counsel for the petitioners *Khwrwmshar*

Brahma @ Khurwmshar Brahma and Birkhat Narzary @ Birkhat Narjary.

2. The petitioners have filed this application under Section 439 of the Code of Criminal Procedure, 1973 (CrPC for short) with prayer for bail as they are behind bars since 07.11.2023 in connection with Sessions Case No. 01/2024 arising out of OR No. BGN/06 of 2023-24 registered under Sections 9, 39, 48 (A), 49(B), 50, 51 and 57 of Wild Life Protection Act, 1972 and Section 379 of the Indian Penal Code.

3. Heard D. Gogoi, learned Special Public Prosecutor Wildlife

4. The learned Special Public Prosecutor has serious objection stating that this matter is prejudiced and is pending trial before the learned Court of Sessions Judge, Bongaigaon. The petitioners can approach the learned Court of Sessions Judge and apply for bail. The petitioners are not entitled to bail as they were caught red handed while smuggling gecko which is a serious offence under the Wildlife Protection Act and is a scheduled animal under Schedule II of the Act.

5. I have considered the submissions at the bar with circumspection. I have considered the submissions that the petitioners have been behind bars for 91 (Ninety One) days. The petitioner No. 1 who is an LP School Headmaster has lost his job and he is now suffering immensely as he is unemployed. It is also submitted that the petitioner No. 2 was an ex-service man. I have also considered the submissions that the petitioners are local residents and they are willing to abide by any stringent bail conditions to be imposed upon them. It is also submitted that the petitioners are willing to cooperate with the trial.

6. Under the peculiar circumstances of this case, petition is allowed.

7. The petitioners are enlarged on bail on furnishing a bail bond of *Rs.50,000/- (Rupees Fifty Thousand)* each with a suitable surety of like amount to the satisfaction of the learned Sessions Judge, Bongaigaon under the conditions that:

i) The petitioners shall refrain from such activities with which they are alleged.

ii) The petitioners are directed not to leave the jurisdiction of the trial Court without prior written permission till completion of the trial.

iii) The petitioners shall cooperate with the trial as well as with the investigation.

8. On breach of any bail conditions, bail order shall stand cancelled.

In the above terms this Bail Application stands disposed of.

JUDGE

Comparing Assistant