

GAHC010026242024



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

Case No. : Bail Appln./388/2024

SONU KUMAR NONIA AND ANR.
S/O SRI BINOD KUMAR NONIA
R/O VILL- BAHUPUR
P.S. TINPAHAR
DIST. SAHEBGANJ
STATE- JHARKHAND.

2: SUBHOM KUMAR MAHATO
S/O LATE BECHAN MAHATO
R/O VILL- BAHUPUR
P.S. TINPAHAR
DIST. SAHEBGANJ
STATE- JHARKHAND

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. K K DUTTA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 23.02.2024

Heard Mr. K. K. Dutta, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail to the accused/ petitioners, who have been arrested in connection with Lumding P.S. Case No. 219/2023, under Sections 120(B)/349/411/413 of the Indian Penal Code (corresponding G.R. Case No. 2123/2023).

Case Diary has been received. Perused the same. Heard both sides.

It is submitted by Mr. Dutta, learned counsel for the petitioners, that the accused/petitioners are innocent and they deal with the scrap mobile handsets and hence, it is very obvious for recovery of mobile handsets from their possession. However, they are not habitual offender and there is no document to prove that they were earlier convicted in any other case prior to this case to attract Section 413 of the Indian Penal Code. Being a scrap mobile dealer, they

received the mobile handsets from various persons and deals with the said business. But they do not commit any such offence as alleged in the F.I.R. More so, simply lodging of an F.I.R. on earlier occasion cannot be the sole ground to prove guilt of the present accused/petitioners under Section 413 of the Indian Penal Code. Thus, Section 413 of the Indian Penal Code is not at all applicable in this case against the present accused/petitioners. In this context, he also relied on a decision of Hon'ble Delhi High Court in **Ajay Sethi Vs. State, dated 30.08.2017**, wherein it has been observed *that 'mere existence of series of FIRs does not amount to proof, as a FIR is nothing but allegations made by the complainant'*. It is also been observed that a series of Charge-Sheets for offence under [Section 411](#) IPC would not tantamount to proof. The State has to establish that the appellant was convicted repeatedly under Section 411 of the Indian Penal Code and in that case only Section 413 of the Indian Penal Code will be attracted. Further he submitted that the accused/petitioners are behind the bar since 28.12.2023, i.e. 57 days in custody, and hence, considering his length of detention also, they may be enlarged on bail.

In this context, Mr. Borthakur, learned Additional Public Prosecutor, has submitted that there are sufficient incriminating materials against the present accused/petitioners. In the instant case, 49 numbers of mobile handsets were recovered from the possession of the accused/petitioners. That apart, in another case of Nagaon P.S. Case No. 2864/2021 also, around 134 numbers of mobile handsets were recovered from the possession of the accused/petitioners. More so, from the materials available in the Case Diary, it is also seen that some of the mobile handset owners have filed various petitions for zimma of the mobile, which otherwise establishes that those mobile handsets were not sold to the

present accused/petitioners as a scrap material, but they were stolen one. Further, the petitioners are from Jharkhand and also involved in similar kind of offences and there may be some other persons involved in this case who are yet to be nabbed by Investigating Officer. Accordingly, he raised objection and submitted that this is not at all a fit case to allow the accused to go on bail only considering the length of detention.

Considering the submissions made by the learned counsels for both sides and also considering the entire circumstances of this case, it is seen that it is an admitted fact that 49 numbers of mobile handsets were recovered from the possession of the present accused/petitioners and that apart, 134 numbers of mobile handsets were also recovered from the possession of the accused person under Nagaon P.S. Case No. 2864/2021. It also reveals that they were released on bail in the earlier case on 07.01.2022 and thereafter, almost 1 year later, they alleged to have committed the same offence and for which they have been arrested and are presently behind the bar. It is also a fact that till date, the accused/petitioners are not convicted in any other case or the prosecution is not in a position to provide any other orders of conviction against the present accused/petitioners.

However, considering the nature of offence and also considering the incriminating materials available in the Case Diary, I find that further custodial interrogation of the accused/ petitioners may be necessary to unearth some facts of this case as well as for the purpose of just and fair investigation of the case; and therefore, I find it not a fit case to extend the privilege of bail to the accused/petitioners and accordingly, the same stands rejected.

In terms of above, this bail application stands disposed of.

The Case Diary be sent back.

JUDGE

Comparing Assistant