

GAHC010029202024



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

Case No. : AB/339/2024

SRIDHAM SARKAR AND ANR
S/O SUBUDH SARKAR
R/O VILL- GUIJAN NO. 5,
P.S. GUIJAN, P.O. RANGAGHORA
DIST. TINSUKIA, ASSAM,
PIN-786147

2: SRI JADU SARKAR
S/O SUBUDH SARKAR

R/O VILL- GUIJAN NO. 5

P.S. GUIJAN
P.O. RANGAGHORA
DIST. TINSUKIA
ASSAM-78614

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE CHIEF CONSERVATOR OF FOREST, DIBRUGARH
RANGE, DIBRUGARH,
(NOTICE THROUGH SPECIAL PUBLIC PROSECUTOR, WILD LIFE
PROTECTION).

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SPECIAL PP ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 22.02.2024

Heard Mr. U.S. Bora, learned counsel for the petitioners. Also heard Mr. D. Gogoi, learned Special P.P., Forest Department.

This is an application filed under **Section 438 Cr.P.C.**, praying for pre-arrest bail by the petitioners, namely, **Sridham Sarkar and Jadu Sarkar**, in connection with **Complaint Case No. 01/2023(arising out of OR No. D/44)**, registered under Section 9/39/40/44/49B/51 of the Wildlife Protection Act.

Mr. Gogoi, learned Special P.P., Forest Department has submitted that in this case, the sections which are imposed upon the petitioners are bailable in nature. He further submits that in Wildlife Protection Act, the Schedule I are the bailable offence and Schedule II are the non-bailable offence. Hence, in this case, the sections are bailable one, so that the present bail application is not maintainable.

Mr. Bora, learned counsel for the petitioners submits that he has nothing to say regarding maintainability of the bail application.

I have considered the submissions made by the learned counsel for the parties.

Section 438 Cr.P.C. deals with pre-arrest bail which is reproduced as follows-

“Section 438- Direction for grant of bail to person apprehending arrest-
(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the high Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail;.....”

On bare look at the provision, it reveals that Section 438 Cr.P.C. is applicable only in case of non-bailable offence.

In the case in hand, the case was registered under Section 9/39/40/44/49B/51 of the Wildlife Protection Act which are Schedule I offence, as such bailable in nature. Hence, in view of the above, the present bail application under Section 438 Cr.P.C. is not maintainable and dismissed and disposed of accordingly.

JUDGE

Comparing Assistant