

GAHC010034372024



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

Case No. : AB/429/2024

JAHANGIR ALOM @ SADULLAH AND ANR.
S/O AJIJUR RAHMAN
R/O KOKILA NAYAPARA
P.S. ABHAYAPURI
DIST. BONGAIGAON, ASSAM

2: RUHUL AMIN @ RAJU
S/O KADER ALI
R/O KOKLA NAYAPARA
P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

22.02.2024

Heard Mr. S. H. Sikdar, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

This is an application filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail to the accused/petitioners, who are apprehending arrest in connection with PRC Case No. 971/2023 under Sections 366(A)/34 of IPC arising out of Kalgachia P. S. Case No. 123/2016, under Sections 120(B)/366(A)/34 of IPC, which is pending before the Court of learned Chief Judicial Magistrate, Barpeta.

Mr. Sikdar, learned counsel for the petitioner has submitted that both the accused/petitioners are shown as absconder in the charge-sheet filed under PRC Case No. 971/2023 under Sections 366(A)/34 of IPC arising out of Kalgachia P. S. Case No. 123/2016, under Sections 120(B)/366(A)/34 of IPC which is pending the Court of learned Chief Judicial Magistrate, Barpeta. He further submits that the police never searched for the accused/petitioners along with that they were not aware about the pendency of this case before the learned Trial Court. However, both the accused/petitioners are ready to appear before the Court below and face the trial, if they are given some kind of interim protection and accordingly, he prays for stay of the NBWA till their appearance before the said Court.

In this context, Mr. Das, learned Additional Public Prosecutor submits that the direction may be given to the accused/petitioners to appear before the learned Trial Court with a proper application for regular bail.

Considering the submissions of learned counsels for both sides and also considering the fact that the accused/petitioners were never searched by police during the investigation of this case, as submitted by the learned counsel for the petitioners, and further considering the view of the Hon'ble Apex Court passed in the case of ***Aman Preet Singh Vs. CBI (2021 AIR SC 4154)***, wherein, it has been held that "if the custody of the accused was not

required during the entire period of investigation, in such scenario, it is proper to enlarge the accused on bail", I hereby direct the accused/petitioners to appear before the Court below within 15(fifteen) days from today with a proper application for bail which shall be considered by the learned Trial Court in accordance with law. And, till then, no coercive action shall be taken against the accused/petitioner as well as the NBWA issued against them shall be stayed till their appearance before the said Court.

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

The LCR as well as the Case Diary be returned.

JUDGE

Comparing Assistant