

GAHC010047522024



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

Case No. : Bail Appln./670/2024

PANKAJ PHUKAN AND 2 ORS.
S/O LATE DEBEN PHUKAN
R/O VILL- JAKHALABANDHA
WARD NO. 4,
P.O. AND P.S. JAKHALABANDHA
DIST. NAGAON, ASSAM
PIN CODE-782136

2: PAPU KALITA
S/O LATE BIREN KALITA
R/O VILL-SARUBHUGIA
P.O. AND P.S. JAKHALABANDHA
DIST. NAGAON
ASSAM
PIN CODE-782136

3: BIPUL HANDIQUE
S/O LATE DIMBESWAR HANDIQUE
R/O VILL- SECONEE PATHAR 9GOHAIN GOAN)
P.O. AND P.S. JAKHALABANDHA
DIST. NAGAON
ASSAM
PIN CODE-78213

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR P KATAKI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

07.03.2024

Heard Mr. P. Kataki, learned counsel for the accused persons and Mr. R.J. Barua, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by three accused persons namely, **Sri Pankaj Phukan; Sri Papu Kalita; and Sri Bipul Handique**, who have been languishing in jail hazot since 28.02.2024, in connection with the **Jakhalabanda P.S. Case No. 17/2024**, under Sections 120(B)/ 420/ 406/ 384/ 506/ 34 of the IPC, for granting bail.

3. The said case has been registered on the basis of one FIR lodged by one Jitu Moni Borah, on 27.02.2024. The essence of allegation made in the FIR is that on 26.08.2023, one Sri Pankaj Phukan; Sri Papu Kalita; and Sri Bipul Handique, have purchased a plot of land belonging to his wife and they have not been paying the price of the same and dragging the matter for years together and accused Papu Kalita and Bipul Handique have taken a sum of Rs. 90,000/- as brokerage from him.

4. Mr. Kataki, learned counsel for the accused persons submits that the accused persons were arrested on 28.02.2024, and since then they have been languishing in jail hazot for last 9 days. Mr. Kataki further submits that there was one registered agreement between accused Pankaj Phukan and wife of the informant namely, Anima Saikia and that the value of the land was fixed @ Rs. 9,10,000/- and that the informant and his wife have received a sum of Rs. 5,00,000/- and later on, they have demanded a sum of Rs. 15,00,000/- and therefore, the dispute arose and the sale process could not be completed. Mr. Kataki also submits that while causing arrest of the accused persons by the IO, he has not complied with the provision of Section 41(A) Cr.P.C. and that the accused persons are ready to cooperate with the

investigating agency and therefore, it is contended to allow this petition.

5. On the other hand, Mr. Barua, learned Additional Public Prosecutor, after obtaining instruction from the Officer In-Charge of concerned P.S. submits that the Section 41(A) of the Cr.P.C. has not been complied with here in this case. However, Mr. Barua submits that at this stage the case diary may be called for.

6. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record.

7. It appears that the accused persons were arrested on 28.02.2024, and since then they have been languishing in jail hazot for last 9 days. Further, it appears that while causing arrest of the accused persons by the IO, he has not complied with the provision of Section 41(A) Cr.P.C.

8. Having regards to above and also having regards to the observation made by Hon'ble Supreme Court in the case of **Arnesh Kumar vs. The State of Bihar**, reported in **(2014) 8 SCC 273** and in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.**, reported in **2022 LiveLaw (SC) 577**, this Court is of the view that the accused persons are entitled to bail, for non-compliance of the Section 41(A) of the Cr.P.C.

9. Accordingly, this Court is inclined to allow this application, without the case diary and therefore, it is provided that on furnishing a bond of Rs. 50,000/- each only, with one surety of like amount to the satisfaction of the learned **Sub-Divisional Judicial Magistrate (M), Kaliabor, Nagaon**, the accused persons be enlarged on bail.

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

JUDGE

Comparing Assistant