

GAHC010050232024



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

Case No. : Bail Appln./692/2024

SARIF UDDIN AND ANR.
S/O SARIF UDDIN
R/O VILL- GAONBURHAR PAM, HAJO, P.O. HAJO
PS. HAJO,
DIST. KAMRUP (RURAL), ASSAM
PIN-781102

2: PARBAT ALI @ BABUL ALI
S/O HUSSAIN ALI
R/O JAHIRPUR
P.S. CHHAYGAON
PIN- 781124
DIST. KAMRUP (RURAL)
ASSA

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR BHARGAV DAS

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 07.03.2024

Heard Mr. A. Baruah, learned counsel for the accused and Mr. R.J. Baruah, learned Addl. Public Prosecutor for the State respondent.

2. This petition, under Section 439 Cr.P.C. is preferred by the accused persons, namely, Sarif Uddin and Parbat Ali @ Babul Ali, who has been languishing in jail hazot in connection with Basistha P.S. Case No. 102/2024, under Sections 153A/325/385/294/506/34 of the IPC, since 18.02.2024, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Sasklim on 18.02.2024. The essence of allegation made in the FIR dated 18.02.2024, is that the friends of the informant, namely, Sarhon Terang, Pratap Singh Teron, Aprilson Enghi and others, who were working in Galaxy Cement Factory, situated 12th Mile, Jorabat, had not been paid their daily wages by the authority of the factory, and one Babul Ali, who is the Mohori of the said factory, had demanded huge amount of money for releasing their wages and on that day, at about 2 a.m., when they approached for their wages, they were beaten up, as a result of which they sustained grievous injuries and they were also abused by the Manager of the company, targeting the Karbi community and also threatened them with dire consequences.

4. Mr. A. Baruah, the learned counsel for the accused submits that the accused were arrested on 18.02.2024 and since then, they have been

linguishing in jail hazot for last 18 days, and that one of the co-accused, namely, Markendey Rao has already been enlarged on bail by this Court, vide order dated 21.02.2024, in Bail Appln. No. 494/2024, and that the present accused persons are also stand in the same footing, and maintaining parity, they may also be granted the privilege of bail. Mr. Baruah further pointed out that while causing arrest of the accused persons, the I.O. has not complied with Section 41A of the Cr.P.C. and in view of the judgment of the Hon'ble Supreme Court in the case of *Satender Kumar Antil Vs. C.B.I. and Anr., reported in (2022) 10 SCC 51*, due to non-compliance of Section 41A of the Cr.P.C., the accused persons are also entitled to be enlarged on bail, and therefore, it is contended to allow the petition.

5. On the other hand, Mr. R.J. Baruah, learned Addl. Public Prosecutor has opposed the petition on the ground that after perusing the case diary, the learned Addl. Sessions Judge (FTC) No. 3, Kamrup(M), vide order dated 02.03.2024, in BA Case No. 174/2024, has dismissed the petition filed by the present accused persons, and the case diary is not available before the Court.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the order dated 21.02.2024, in Bail Appln. No. 494/2024, passed by this Court and also perused the order dated 02.03.2024, in BA Case No. 174/2024, passed by the learned Addl. Sessions Judge (FTC) No. 3, Kamrup(M).

7. It appears that the ground for extending the privilege of bail to one of the co-accused, namely, Markendey Rao, vide order dated 02.03.2024, was non-compliance of the provision of Section 41 A of the Cr.P.C. by the I.O. while causing arrest of the said accused and it also appears that the present two accused persons were also arrested and forwarded to jail hazot vide the same

forwarding report. And as such, non-compliance is apparent and undisputed.

8. In view of the above, and also maintaining parity with the co-accused, namely, Markendey Rao, and also having regards to the period of detention, this Court is inclined to allow the petition. It is provided that on furnishing a bond of Rs. 50,000/- each, with one surety of like amount, to the satisfaction of the learned CJM, Kamrup(M), the accused persons be enlarged on bail.

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

JUDGE

Comparing Assistant