

GAHC010054252024



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

Case No. : AB/676/2024

BIREN BEY @ RENSING BEY AND ANR.
SON OF SONARAM BEY, R/O NORONG RONGHANG GAON, PS KHERONI,
DIST WEST KARBI ANGLONG, ASSAM

2: MANGAL SING BEY @ MANGAL BEY
SON OF SARMAN BEY
R/O VILL SAMPARA
HONGKRAM
P.S BAITHALANGSO
DIST WEST KARBI ANGLONG ASSA

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. D GOGOI

Advocate for the Respondent : PP, ASSAM

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

10.05.2024

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

2. This is an application under Section 438 of the code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/petitioners, who are apprehending arrest in connection with PRC No.25/2022 arising out of Kheroni P.S. Case No.56/2022 under Sections 143/458/365/302/201 of the Indian Penal Code.

3. The scanned copy of the Case Record as well as the Case Diary has been received and I have perused the same.

4. It is submitted by the learned counsel for the petitioners, Mr. Bora that the accused/petitioners are not at all involved in the alleged offence, but, their name has been mentioned in the FIR as accused Nos. 3 and 7 respectively. He also submits that in the FIR the address of the petitioners were shown as village Langhood Enghee Gaon, Kheroni Police Station, West Karbi Anglong and in the said address the summon was issued. However, it is submitted by the learned counsel for the petitioners that the accused/petitioners were not the resident of aforesaid address, but they are the resident of village Norong Ronghang, Kheroni Police Station. During the entire investigation, the police searched them in the village Langhood Enghee Gaon, Kheroni Police Station, West Karbi Anglong, though they are not the resident of the said village. To substantiate his plea, the learned counsel for the petitioners also furnished the voters list of the year 2010 of village Norong Ronghang, wherein, the name of the present petitioners were also reflected along with their other family members.

5. He further submitted that during the investigation, neither the police searched

for them nor they received any summon to appear before the learned Court below. It is further submitted that the alleged incident occurred on 19.06.2012 and after 7 (seven) years, the charge-sheet was filed on 31.12.2019 and accordingly, the NBWA and P/A was issued against the accused/petitioners through SP. The petitioners came to know about the pendency of this case only after the issuance of NBWA and P/A issued by the learned Court below. However, they are ready and willing to appear before learned Court below and to face the trial, if they are granted with the privilege of interim protection as there is an apprehension of arrest in connection with this case.

6. On the other hand, the learned Additional Public Prosecutor, Mr. Borthakur submits that the case was charge-sheeted on 31.12.2019 and the summon were issued against the accused/petitioners by the learned Court below on various occasions but to avoid the police arrest, the accused/petitioners never appeared before the learned Court below nor before the IO during the investigation of this case. He further submits that from the statement of the witnesses, it is seen that after the alleged incident, the accused/petitioners had left the village Langhood Enghee Gaon only to avoid police arrest.

7. In this contest, Mr. Bora, learned counsel for the petitioners has submitted that that the incident had occurred on 19.06.2012 and the names of the petitioners were already existed in the voters list of the year 2010 and thus, he submits that they were not the resident of said village Langhood Enghee Gaon at the relevant time of the alleged incident.

8. After hearing the submissions made by the learned counsels for both sides, I have perused the scanned copy of the Case Record along with the Case Diary. From the records, it is seen that the charge-sheet was submitted showing the accused/petitioners as absconders and the learned Court below had issued summon on various occasion against them in order to expedite the Trial Court issued BWA but,

the same was returned unserved. Thus, finding no other alternative, the learned Court below issued NBWA and P/A against the accused petitioner No.1, and issued NBWA against the petitioner No.2. From the submission made by the learned counsel for the petitioners, Mr. Bora, it is seen that the petitioners were the resident of the village Norong Ronghang, but, during the time of relevant incident, the entire summons, NBWA and P/A were sent in the address which was mentioned in the FIR i.e village Langhood Enghee Gaon. However, it is the case of the accused/petitioners that they never received any summons nor police made any inquiry about them as they were not the resident of village Langhood Enghee Gaon.

9. Considering the entire aspect of the case, the possibility of non receiving of summon cannot be outrightly rejected and accordingly, I hereby direct the petitioners to appear before the learned Court below within 10 (ten) days from today and to file a fresh petition for regular bail and upon filing of such petition, the learned Court below shall consider and dispose of the same in accordance with law. And, till then, the execution of NBWA and P/A issued against the petitioners, stands stayed/ suspended, if any.

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

JUDGE

Comparing Assistant