

GAHC010068502024



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

Case No. : AB/913/2024

HAMIDUR RAHMAN AND 2 ORS.
S/O SHAHJAHAN SK, VILL- KHOPATIA, P.S.-SUKCHAR, DIST-SOUTH
SALMARA MANKACHAR, ASSAM, PIN-783128

2: HASAN ALI @ KANKATA
S/O SHAHAJAHAN SK
VILL- MOLAKHOWA
P.S.-SUKCHAR
DIST-SOUTH SALMARA MANKACHAR
ASSAM
PIN-783128

3: Rofique Sk
P.O - BOW-BAZAR
P.S - SUKCHAR
DIST - SOUTH SALMARA - MANKACHAR
ASSAM

3: ROFIQUE SK
S/O HUDE SK
VILL- BOW BAZAR
P.S.-SUKCHAR
DIST-SOUTH SALMARA MANKACHAR
ASSAM
PIN-78312

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

22.04.2024

Heard Mr. A.Z. Ahmed, learned counsel for the applicants and also heard Ms. N. Das, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 438 Cr.P.C. is preferred by three applicants, namely, Hamidur Rahman, Hasan Ali @ Kankata and Rofique Sk, who have been apprehending arrest in connection with Sukchar P.S. Case No.239/2023 under Section 379/411/353/34 IPC, read with Section 13(1)/16 of the Assam Cattle Preservation Act, 2021, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Moidul Islam, on 05.10.2023. The essence of allegations made in the aforesaid FIR is that on 05.10.2023, at about 5:00 p.m., they have found Hamidul Rahman, Hasan Ali @ Kankota and Rafique, at Bau Bazar, near Brahmaputra river, under Sukchar P.S., preparing to transport cattle to Bangladesh and when they tried to apprehend them, they fled away along with the cattle and also the accused have obstructed them in discharging their duty and assaulted him with dao and lathi over his hand and head and caused injuries to him and thereafter, they managed to flee away.

4. Mr. Ahmed, learned counsel for the applicants submits that this is the 2nd pre-arrest bail application preferred by the applicants and the earlier one being AB No.3984/2023, was dismissed by this Court after perusing the case diary on 23.01.2024, on the ground that they have not been cooperating with the investigating agency. Further, Mr. Ahmed submits that on earlier occasion the purchase receipt of the seized buffaloes could not be

produced before this Court and also before the I.O. and that the applicants are ready to cooperate with the investigating agency and they have already appeared before the I.O. and their statements are also recorded and therefore, Mr. Ahmed contended to allow this petition.

5. On the other hand, Ms. N. Das, learned Additional Public Prosecutor, Assam, has produced the case diary before this Court and submits that material part of the investigation is almost over. However, Ms. Das has pointed out that on earlier occasion the petition was dismissed on the ground of non-cooperation of the applicants with the investigating agency.

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 case diary with the assistance of Ms. Das, learned Additional P.P.

7. It is not in dispute that the applicants have appeared before the I.O. and their statements have also been recorded. Further, it appears from the case diary that material part of the investigation is almost over and as such, their custodial interrogation, in the interest of investigation seems to be not warranted here in this case and therefore, this Court is inclined to allow this petition.

8. It is provided that in the event of arrest of the applicants, namely, Hamidur Rahman, Hasan Ali @ Kankata and Rofique Sk, in connection with Sukchar P.S. Case No.239/2023 under Section 379/411/353/34 IPC, read with Section 13(1)/16 of the Assam Cattle Preservation Act, 2021, they shall be enlarged on pre-arrest bail on their executing a bond of ₹ 50,000/- each, with one surety of the like amount to the satisfaction of the arresting authority. The above privilege is, however, subject to the following conditions:-

- (i) The applicants shall make themselves available for interrogation by the Investigating Officer as and when required;
- (ii) The applicants shall not, directly or indirectly, make any inducement, threat or

promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and

(iii) The applicants shall not leave the jurisdiction of the learned C.J.M., South Salmara, Mankachar, without prior permission.

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

10. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant