

GAHC010081772024



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

Case No. : AB/1055/2024

SELIM UDDIN BARBHUIYA AND ANR.
S/O LATE ABDUL NOOR BARBHUIYA,
VILL.- DEBENDRA NAGAR, BADARPUR, P.S.- BADARPUR, P.O.-
BADARPUR, KARIMGANJ, ASSAM.

2: NOORJAHAN BEGUM BARBHUIYA @ NOORJAHAN BEGUM
D/O LATE ABDUL NOOR BARBHUIYA

VILL.- DEBENDRA NAGAR
BADARPUR
P.S.- BADARPUR
P.O.- BADARPUR
KARIMGANJ
ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

30.04.2024

Heard Mr. A.M. Barbhuiya, learned counsel for the applicants and also heard Mr. B.

Sarma, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under Section 438 Cr.P.C. is preferred by two applicants, namely, Selim Uddin Barbhuiya and Noorjahan Begum Barbhuiya @ Noorjahan Begum, who have been apprehending arrest in connection with Basistha P.S. Case No.231/2024 under Section 407 IPC, for grant of pre-arrest bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by one Om Prakash Chaubey, on 03.04.2024. The essence of allegation made in the aforesaid FIR is that he is the Proprietor of a transport company in the name and style "Om Roadways" at Nalapara Kali Mandir Road and on 30.03.2024 he had loaded a twelve wheeler truck, bearing Registration No.AS-01LC-7377 with various items of worth ₹ 40,00,000/- and sent the same to the consignee of Silchar, but after reaching at Jowai of Meghalaya, the truck has gone to be untraced and the mobile number of the driver is found to be switched off.

4. Mr. Barbhuiya, learned counsel for the applicants submits that the applicants are innocent and no way involved with the offence alleged in the FIR and they are also no acquainted with the person, who was already arrested here in this case and they have received notice under Section 41A Cr.P.C. from the I.O. concerned and that they are ready to cooperate with the investigating agency and therefore, Mr. Barbhuiya contended to allow the petition.

5. On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor, Assam, has produced the case diary before this Court and submits that as the investigation is in nascent stage, there is no incriminating materials against the present applicants so far except however, issuance of notice under Section 41A Cr.P.C. to the applicants.

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 Mr. Sarma, learned Additional P.P.

7. In view of the materials collected so far in the case diary as well as the submission

of the learned Advocates of both the parties, custodial interrogation of the applicants seems to be unwarranted here in this case and therefore, this Court is inclined to allow this petition. It is provided that in the event of arrest of the applicants, namely, Selim Uddin Barbhuiya and Noorjahan Begum Barbhuiya @ Noorjahan Begum, in connection with Basistha P.S. Case No.231/2024 under Section 407 IPC, 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., Kamrup(M), without prior permission.
8. In terms of above, this anticipatory bail application stands disposed of.
9. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant