

GAHC010094242024



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

Case No. : AB/1256/2024

AKHIL DAS AND ANR.
S/O BIDYADHAR DAS
VILL- KHELWA, P.S. BELSOR
DIST. NALBARI, ASSAM

2: MD. KUTUBUDDIN AHMED
S/O LATE BASIR ALI
VILL- SUKEKUCHI
P.S. BELSOR
DIST. NALBARI
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B C DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

03.06.2024

1. Heard Mr. J. H. Saikia, learned counsel for the petitioners, Akhil Das

and Md. Kutubuddin Ahmed.

2. The petitioners have filed this application under Section 438 of the Code of Criminal Procedure, 1973 (CrPC for short) with prayer for pre-arrest bail as they are apprehending arrest in connection with Belsor Police Station Case No. 162/2022 under Sections 420/409/34 of the Indian Penal Code, 1860 (IPC for short).

3. Heard Mr. B.B. Gogoi, learned Additional Public Prosecutor for the respondent State.

4. The FIR unfolds that the President & Secretary of Borbila Gaon Unnayan Samitee submitted a complaint petition to the Managing Director, AFDC Limited on 27.12.2021 regarding weed clearance of Borbila Beel of Nalbari district. In this regard, the Managing Director, AFDC also received another complaint petition from Borbila Kheluwa Fishermen Co-rporation Society Limited on the same day. On receipt of these two complaints the Managing Director, AFDC Limited decided to make a proper inquiry and accordingly, the Deputy Commissioner, Nalbari was requested to make necessary arrangements to verify the matter and the Deputy Commissioner, Nalbari on 16.07.2022 vide memo No. NDC-242/2009/413 informed the Managing Director, AFDC Limited that as per the report of the Additional Deputy Commissioner, Nalbari, it was found that the scheme executed on behalf of the AFDC Limited for clearing water hyacinth was not executed properly. The fund amount of Rs.27,82,685/- (Rupees Twenty Seven Lacs Eighty Two Thousand Six Hundred and Eighty Five) was sanctioned by the AFDC Limited authority against the said work and during the relevant period of time the AFDC officials along with Sri Akhil Das, then lessee of the

Borbila Beel and contractor/stake holder named Kutubuddin Ahmed of M/S Maa Sley House, Chamata Nalbari are responsible for execution of the said work. Further it was also seen that the contract of work was awarded to the stake holder M/S Maa Sley House, Md. Kutubuddin Ahmed without any tender process.

5. It is submitted on behalf of the petitioners that the incident occurred on 27.12.2021 and the FIR was lodged after a prolonged period, i.e. on 16.08.2022. The FIR was registered under Sections 420/409/34 of the IPC. No offence under Sections 409/34 of the IPC is made out as the petitioners are not Government servants or they were not in a possession of funds purported to be misappropriated by them.

6. Annexure-C reveals that the petitioner No. 1 Akhil Das, lessee of Borbila Beel, (Meen Mahal) have taken over the possession of the Beel after clearing and removal of water hyacinth from the i/c Project Director on 07.01.2020. It is further submitted that no case under Section 420 of the IPC has been made out as the allegation is basically that the work was not completed and was not executed properly.

7. Heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam who has submitted that the complaint as well as the Annexure-D reveals that the work was not executed properly by M/S Maa Sley House as well as by the petitioner No. 1.

8. I have considered the submissions at the Bar with circumspection.



9. It is submitted by the learned Additional Public Prosecutor that the petitioners have appeared before the Investigating Officer and they have co-operated with the investigation.
10. I have considered the submissions that the petitioners have not violated the bail conditions..
11. The Case Diary reveals that the investigation has progressed to a considerable extent.
12. In view of the above foregoing discussions, the interim order dated 20.05.2024 is hereby made absolute.
13. Send back the Case Diary.

JUDGE

Comparing Assistant