

GAHC010105712024



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

Case No. : AB/1374/2024

KUSHAL KHANIKAR AND ANR
S/O NOBIN KHANIKAR, R/O VILL- NO. 1 BAMUNIJEAN, P.S.-NORTH
LAKHIMPUR, DIST- LAKHIMPUR, ASSAM

2: MOINA KHANIKAR
S/O KUSHAL KHANIKAR
R/O VILL- NO. 1 BAMUNIJEAN
P.S.-NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR B BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 12-06-2024

Heard Mr. B. Bora, learned counsel for the petitioners 1. Sri Kushal Khanikar and Sri Moina Khanikar.

2. The petitioners have filed this application under Section 438 of the Code of Criminal Procedure, 1973 (CrPC for short) with a prayer for pre-arrest bail as they are apprehending arrest in connection with G.R. Case No. 3285/2017 arising out of Lakhimpur Police Station Case No. 1389/2017 under Sections 341/302/34 of the Indian Penal Code, 1860 (IPC for short) pending in the Court of learned Sub-Divisional Judicial Magistrate (S), Lakhimpur, North Lakhimpur.

3. Also heard Mr. K. Baishya, learned Additional Public Prosecutor, Assam for the respondent State.

4. The allegation against the petitioners is that they have committed murder on Bidyut Saikia on 10.11.2017. It is submitted on behalf of the petitioners that they are willing to cooperate with the trial. Charge sheet has been laid against them and as they were not aware of this case, they were shown as absconders when charge sheet was laid against them.

5. The petitioners have prayed for pre-arrest bail as they are apprehending that as soon as they appear before the Eleka Magistrate, they will be forwarded to custody as they are booked under Section 302 of the IPC and hence, this petition, praying for protection under Section 438 of the CrPC.

6. It is submitted on behalf of the petitioners that earlier an FIR was lodged by the petitioner No. 1 Kushal Khanikar against the deceased Bidyut Saikia @ Kantu Chutia, who had assaulted the informant Kushal Khanikar's son. Annexure-5 is the FIR against the deceased Bidyut Saikia @ Kantu Chutia.

7. I have considered the submissions at the bar with circumspection. I have also scrutinized the Trial Court Records.

8. The learned Additional Public Prosecutor has raised serious objection.

9. Provisions under Section 438 of the CrPC cannot be exercised in an untrammelled manner. The allegation against the petitioners is of serious nature.
10. I have considered the magnitude of the offence and the role attributed to the petitioners. At this juncture there appears to be no justified ground to extend the privilege of anticipatory bail to the petitioners.
11. Petition stands rejected. The petitioners are directed to appear before the Committal Court and apply for bail, which may be considered by the Court as per law.
12. In the above terms, this Anticipatory Bail application stands dismissed.
13. Send back the Case Diary.

JUDGE

Comparing Assistant