

GAHC010106982024



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

Case No. : AB/1407/2024

UMOR FARUK CHOUDHURY @ BILAL AHMED CHOUDHURY AND ANR
S/O MD. ABDUL MAZID CHOUDHURY, R/O VILL- DEBASTHAN BAZAR,
P.S.-MURAJHAR, DIST- HOJAI, ASSAM

2: MD. KABIR AHMED CHOUDHURY
S/O MD. ABDUL MAZID CHOUDHURY
R/O VILL- DEBASTHAN BAZAR
P.S.-MURAJHAR
DIST- HOJAI
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR B CHANDA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 19-06-2024

1. Heard Mr. B. Chanda, learned counsel for the petitioners. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State.

2. This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, *1. Umor Faruk Choudhury @ Bilal Ahmed Choudhury and 2. Md. Kabir Ahmed Choudhury*, who are apprehending their arrest in connection with Hojai P.S. Case No. 157/2024 under Sections 120(B)/420/406/468/379/411 of the Indian Penal Code.

3. This gist of accusation in this case is that on 22.05.2024 one Jamir Uddin had lodged and FIR against two accused persons, namely, Md. Nur Ahmed Choudhury and Md. Bilal Choudhury (the petitioner No. 1), *inter alia*, alleging that the accused No. 1 named in the FIR, namely, Md. Nur Ahmed Choudhury showing himself to be owner of one JCB 3DX bearing Registration No. AS09-AC-4125, Chassis No. H001099 and Engine No. 001493903 had executed an agreement for sale of the said vehicle to the informant on 20.09.2023 at a consideration amount of Rs.11,60,000/- (Eleven Lakhs and Sixty Thousand) and accordingly, the informant had paid the said amount by issuing cheques of different amount to the said Md. Nur Ahmed Choudhury. However, later on, it came to the light that the said Md. Nur Ahmed Choudhury was not the actual owner of the vehicle and he cheated the first informant by affecting the fraudulent transfer of the aforesaid JCB. It is alleged in the FIR that the accused No. 1 has misappropriated the said amount of Rs.11,60,000/- (Eleven Lakhs and Sixty Thousand) by resorting the fraudulent means. On receipt of the said FIR, Hojai P.S. Case No. 157/2024 was registered.

4. The learned counsel for the petitioners has submitted that the accused No. 1 named in the FIR, namely, Md. Nur Ahmed Choudhury has already been arrested and he is presently detained behind the bars. It is also submitted that the petitioner No. 1, namely, Umor Faruk Choudhury @ Bilal Ahmed Choudhury

has been roped in the case only because he happens to be the brothers of the accused No. 1. He has also submitted that in the entire FIR, no allegation has been made against the petitioner No. 1.

5. As regards the petitioner No. 2 is concerned, namely, Md. Kabir Ahmed Choudhury, the learned counsel for the petitioners has submitted that there is no allegation made against him in the FIR and he is innocent. It is also submitted by the learned counsel for the petitioners that the petitioners are ready to cooperate in the investigation. However, they are apprehending their arrest in this case as Police is searching for them.

6. On the other hand, learned Additional Public Prosecutor has produced the case diary of Hojai P.S. Case No. 157/2024 and has submitted that though there is no incriminating materials in the case diary against Md. Kabir Ahmed Choudhury i.e., the petitioner No. 2, however, there are incriminating materials against the petitioner No. 1, namely, Umor Faruk Choudhury @ Bilal Ahmed Choudhury as independent witnesses has deposed that the JCB in question was taken to the garage by the accused No. 1 along with the present petitioners.

7. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record including the case diary of Hojai P.S. Case No. 157/2024.

8. As no material is presently available against the petitioner No. 2, namely, Md. Kabir Ahmed Choudhury, this Court is of the considered opinion that his application for anticipatory bail may be allowed.

9. As regards the petitioner No. 1 is concerned, though there are

incriminating materials against the petitioner in the case diary, however, considering the fact that the main accused, namely, Md. Nur Ahmed Choudhury has already been detained behind the bars and also considering the progress made in the investigation, the custodial detention of Umor Faruk Choudhury @ Bilal Ahmed Choudhury i.e., the petitioner No. 1 does not appear to be necessary, if he cooperates in the investigation.

10. In view of both the above, both the above named petitioners, namely, 1. Umor Faruk Choudhury @ Bilal Ahmed Choudhury and 2. Md. Kabir Ahmed Choudhury are hereby directed to appear before the Investigating Officer of Hojai P.S. Case No. 157/2024 within a period of seven days from the date of this order and cooperate in the investigation. If they do so, within the stipulated period of time, in the event of their arrest in connection with Hojai P.S. Case No. 157/2024, they shall be allowed to go on bail of Rs.30,000/- (Thirty Thousand) each with one surety of like amount, subject to the satisfaction of the arresting authority.

11. With the above observation, this anticipatory bail application is disposed of.

12. Send back the case diary.

JUDGE

Comparing Assistant