

GAHC010128312024



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

Case No. : AB/1665/2024

KANAK DAS
S/O KRISHNA DAS, R/O GOALHATI, DOWAPARA, P.O.-DOWAPARA, P.S.-
PALASHBARI, PIN NO.-781125, DIST- KAMRUP (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

18.07.2024

1. Heard Mr. M. Rahman, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor appearing for the State of Assam.

2. This application under Section 438 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Kanak Das, who is apprehending his arrest in connection with Palashbari P.S. Case No. 158/2024 under Section 379/413 of the Indian Penal Code.

3. The gist of accusation in this case is that on 06.05.2024, one SI of Police Mr. Rikhab Borah had lodged an FIR before the Officer-In-Charge of Palashbari Police Station, *inter alia*, alleging that on 01.05.2024 at about 4:30 PM an information was received from DYSP (Headquarters), Kamrup, Amingaon that the present petitioner is running a garage at Borihat Chowk, who used to receive suspected stolen vehicles from criminals from different locations. On receipt of the said information, a G.D. Entry bearing G.D. Entry No. 20 dated 01.05.2024 was made and police team proceeded to the garage of the petitioner and found some vehicles in damage condition. The police seized five numbers of vehicles from the garage of the present petitioner.

4. The learned counsel for the petitioner has submitted that the petitioner is the owner of the garage from where the five boat vehicles were seized.

5. It is also submitted by the learned counsel for the petitioner that the petitioner used to receive vehicles for preparing at different times and the vehicles seized from his garage by the police in connection with the case are all given to the garage for repairing by the registered owner and in support of his submission, the petitioner has submitted the copy of Registration Certificate of five persons of seized vehicles.

6. The learned counsel for the petitioner has also submitted that allegations levelled against the present petitioner in the FIR are not true and he is being unnecessarily harassed by the police. It is also submitted that he is ready to cooperate in the investigation.

7. On the other hand, learned Additional Public Prosecutor has produced the case diary of Palashbari P.S. Case No. 158/2024 and has stated that police has seized five numbers of damage vehicles from the garage of the present petitioner.

8. 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 Palashbari P.S. Case No. 158/2024, which was produced by the learned Additional Public Prosecutor.

9. It appears from the case diary that it was only on the basis of suspicion that a search operation was conducted in the garage of the present petitioner and though five numbers of old vehicles were seized from the garage of the present petitioner, mere fact of seizure would not make out a case under Section 379 or under Section 413 of the Indian Penal Code as the petitioner has furnished the copy of the certificate of registration of the seized vehicle and has submitted that the owner of the seized vehicle had brought the vehicles for repairing to the garage of the present petitioner. On the basis of the materials available before this Court at this stage of the investigation, no incriminating materials appear to be there on record against the present petitioner. Further, if the petitioner cooperates with the Investigating Officer, his custodial detention may not be necessary for fair completion of the investigation of Palashbari P.S. Case No. 158/2024.

10. In view of above, the above-named petitioner is hereby directed to appear before the Investigating Officer of Palashbari P.S. Case No. 158/2024, within a period of 10 days from the date of this order and co-operate in the investigation. If he does so within the stipulated period of time, in the event of his arrest in connection with Palashbari P.S. Case No. 158/2024, the above

named-petitioner shall be allowed to go on interim bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the arresting authority, subject to the conditions that:-

- i. That the petitioner shall cooperate in the investigation and shall appear before the Investigating Officer; and
- ii. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any other persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts before the Investigating Officer.

11. Send back the case diary.

12. This Anticipatory Bail application is hereby disposed of.

JUDGE

Comparing Assistant