

GAHC010152452024



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

Case No. : AB/1975/2024

AJIT TERON AND ANR
S/O RABEN TERON
R/O VILL- SAPHAPANI GAON,
P.S. BORPATHAR,
DIST. KARBI ANGLONG, ASSAM

2: MONGOL SING ENGTI @ MONGAL ENGTI
S/O RAJEN ENGTI
R/O VILL- ROGHAMPUR
P.S. BOKAJAN
DIST. KARBI ANGLONG
ASSA

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. U K BARMAN, MS A RONGHANGPI, MR D PEGU, MR. R KONWAR, MR H ALI

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 19.09.2024

Heard Mr. H. Ali, learned counsel for the petitioners. Also heard
Mr. B. Sarma, learned Additional Public Prosecutor for the State.

2. By this petition filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioners, namely, **Ajit Teron and Mongol Sing Engti @ Mongal Engti**, have prayed for granting pre-arrest bail, apprehending arrest in connection with Borpathar P.S. Case No. 28/2024 under Section 189(2)/115(2)/126(2)/132/134/110/324(3) of BNS, 2023 r/w Section 41 of Assam Forest Regulation, 1891 and Section 3 of Prevention of Damage to Public Property Act, 1984.

3. The learned counsel for the petitioners submits that, as per FIR, both petitioners are involved in the alleged offence, as they are accused of assaulting the staff of the forest department and attempting to snatch the rifle from the forest personnel. It is further submitted that the petitioners are no way involved in the alleged offence. The alleged trucks and the timbers do not belong to the petitioners and they do not have any connection with any such timber. According to the learned counsel for the petitioners as the maximum punishment prescribed for the alleged offenses is seven years, a notice under Section 41(A) Cr.P.C. is mandatory. However, no such notice was issued to the petitioners. Hence, the benefit of pre-arrest bail may be extended to the petitioners.

In support of his submissions, learned counsel for the petitioners has placed reliance on the following case laws-

- (i) Satender Kumar Antil v. Central Bureau of Investigation & Anr. reported in 2022 STPL 9378 SC.
- (ii) Rameswar Talukdar v. The State of Assam, reported in 2022 STPL 3846 Gauhati.

4. On the other hand, Mr. Sarma, learned Additional Public Prosecutor has produced the case diary and submits that the petitioners are very much involved in the alleged offence. However, admitted that no such reflection in the case diary that notice was served to the petitioners. Learned Additional Public Prosecutor has opposed in granting bail to the petitioners with a view to investigation is still in progress.

5. I have considered the submissions made by the learned counsel for the parties. I have perused the case diary.

6. In the case of Santender Kumar Antil (supra), the Hon'ble Supreme Court held that-

“b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41 A of the Code and the directions issued by this Court in Arnes Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.”

7. In light of the allegations in the FIR, the maximum punishment being seven years, it is essential that a notice under Section 41(A) Cr.P.C. be served to the petitioners. Both the learned counsel and the Additional Public Prosecutor have confirmed that no such notice has been issued to the petitioners. Therefore, this Court is inclined to grant the privilege of pre-arrest bail to the petitioners.

8. Accordingly, it is provided that in the event of arrest of the petitioners, named above, in connection with Borpathar P.S. Case No. 28/2024 under Section 189(2)/115(2)/126(2)/132/134/110/324(3) of BNS, 2023 r/w Section 41 of Assam Forest Regulation, 1891 and Section 3 of Prevention of Damage to Public Property Act, 1984, they shall be released on furnishing bail bond of **Rs.30,000/- each** with **a suitable surety each** of the like amount, to the satisfaction of the arresting authority.

The direction for pre-arrest bail is subject to the conditions that the petitioners:

(a) shall appear before the Investigating Police Officer within ten days from today and shall co-operate with the investigation;

(b) 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;

9. The anticipatory bail application stands disposed of.

10. Send back the case diary.

JUDGE

Comparing Assistant