

GAHC010256402023



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

Case No. : AB/3881/2023

GOUTAM SEN AND ANR
S/O SRI DILIP SEN
R/O HOIBORGAON STATION,
SANTIPUR UNDER NAGAON POLICE STATION, IN THE DISTRICT OF
NAGAON, ASSAM

2: SRI BIKI SEN
S/O SRI DILIP SEN
R/O HOIBORGAON STATION

SANTIPUR UNDER NAGAON POLICE STATION
IN THE DISTRICT OF NAGAON
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B M CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

19.02.2024

Heard Mr. B. M. Choudhury, learned counsel for the petitioners. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 438 of the Code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/petitioners, who are apprehending arrest in connection with Nagaon P. S. Case No. 864/2023 under Sections 341/326/394/34 of the Indian Penal Code.

From the record, it is seen that the accused/petitioner No.2, Sri Biki Sen was granted with the privilege of interim pre-arrest bail on 01.02.2024, however, the accused/petitioner No.1, namely Sri Goutam Sen is not under interim protection.

Mr. Choudhury, learned counsel for the petitioners has submitted that the accused/petitioners are innocent and they are not at all involved in the alleged offence as stated in the FIR. Though, it is fact that there was some quarrel between the parties, wherein, both the parties sustained minor injuries and in this regard, the petitioners lodged the FIR on 18.09.2023, which was registered as Nagaon P. S. Case No. 863/2023 and on the same day the informant lodged the counter FIR against the petitioners as Nagaon P. S. Case No. 864/2023 alleging *inter alia* that on the night of 17.09.2023, the accused petitioners intercepted the son of the informant and assaulted him causing grievous injuries and also snatched a sum of Rs. 3,46,600/- from him. It is contended by the petitioners that they are victims of circumstance and the petitioner No.2 was not present at the place of occurrence. He also submitted that, on the day of the incident, there was a quarrel between some other two parties and at that time the petitioner No.1 was present and in the mean time the son of the informant namely Manulal Jaiswal arrived there and started quarreling by taking side of one of the party. Thus, considering, the entire facts and circumstance of this case, he submits that it is fit case where the accused/petitioners can be extended with the privilege of pre-arrest bail. Further, he submits that they are still ready and willing to co-operate with the I.O. in further investigation of this case if they are granted with the privilege of pre-arrest bail and therefore, it is prayed to make the interim pre-arrest bail order absolute.

In this context, the learned Additional Public Prosecutor, Mr. Das, has submitted that from the

perusal of the Case Diary, it is seen that the incident took place only when the victim of this case namely Manulal Jaiswal took part in the quarrel by supporting the one party and when the petitioner No.1 went to protect him, he instead hit the petitioner No.1 and they sustained injuries. From the, injury report, it is seen that the petitioner No. 1 had sustained minor injury in his right shoulder, but, the injury report of the informant's son is not available in the case record, however, one CT scan Report has been procured wherein, it is seen that the victim obtained fracture of bone near eye-brow of right eye etc. It is a fact that both the parties were involved in the quarrel which took place between the parties. Further, the learned Additional Public Prosecutor has submitted that the statement of the petitioner No.2 is also not available in the Case Diary. Thus, he raised objection on the prayer made by the learned counsel for the petitioners.

After hearing the submissions of learned counsels for both sides as well as perusing the Case Diary, it is seen that the petitioners had lodged the FIR and thereby, one counter FIR was lodged by the informant side. From the materials available in the Case Diary, it is seen that both the parties had sustained injuries. The Case Diary also revealed that the injury report of the victim is not available, however, one CT scan report of the victim has been procured wherein, he had sustained minor bone fracture. Further, it is also seen that the victim was admitted in the hospital on 18.09.2023 and on the same day he was discharged from the hospital. Thus, considering the materials and entire facts and circumstances of this case, I find it a fit case to extend the privilege of pre-arrest bail to the accused/petitioners. Accordingly, the interim pre-arrest bail granted to the petitioner No.2 vide order dated 01.02.2024, is hereby made absolute with a direction to the accused/petitioner No.2 to co-operate with the I.O. in further investigation of the case.

Accordingly, it is provided that in the event of arrest of the accused/petitioner, namely, Goutam Sen, in connection with Nagaon P. S. Case No. 864/2023 under Sections 341/326/394/34 of the Indian Penal Code, he shall be enlarged on pre-arrest bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the arresting authority, subject to the following conditions:

- (i) that the petitioner Nos. 1 and 2 shall appear before the Investigating Officer of the case within a period of 7 (seven) days from today;

- (ii) that the petitioner shall fully co-operate with the investigation of the case and shall appear before the Investigating Officer as and when required in connection with the investigation of the aforesaid P.S. Case; and
- (iii) that the petitioner 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.

In terms of above, this anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant