

GAHC010268362024



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

Case No. : AB/3364/2024

MASRAB ALI AND ANR.
S/O LATE AMZAT ALI
R/O VILL- MOWAMARI
P.O. AND P.S. SAMUGURI
DIST. NAGOAN, ASSAM
PIN-782140

2: AHMAD ALI
S/O MASRAB ALI
R/O VILL- MOWAMARI
P.O. AND P.S. SAMUGURI
DIST. NAGOAN
ASSAM
PIN-78214

VERSUS

THE STATE OF ASSAM
REP BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : S AHMED, MS A HUSSAIN

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 19.12.2024

- 1.** Heard Mr. D. Ullah, the learned counsel appearing for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor appearing for the State of Assam.
- 2.** This application under Section 482 of BNSS, 2023 has been filed by the petitioners, namely, (1) Masrab Ali and (2) Ahmad Ali, who are apprehending their arrest in connection with PRC Case No. 220/2024 corresponding to Samaguri P.S. Case No. 29/2024 under Section 341/325/326/294/34 of the Indian Penal Code.
- 3.** The gist of accusation in this case is that an FIR was lodged by one Iman Ali, on 30.01.2024, wherein it was alleged that the accused persons named in the FIR (five numbers of accused persons were named in the FIR) had trespassed into the land of the first informant and when the informant and his son tried to stop them, they assaulted them, causing injuries on their person.
- 4.** On the basis of the aforesaid FIR, Samaguri P.S. Case No. 29/2024 was registered and investigation was initiated.
- 5.** After completion of the investigation, charge sheet was laid in the said case, showing the present petitioners as absconder in the charge sheet.
- 6.** It is submitted by learned counsel for the petitioners that the petitioners and informant are brothers in relation and there was a land dispute between them and an altercation occurred between them due to the land dispute. In that regard, the petitioners' side had also filed a cross case against

the family members of the first informant of this case, which is registered as Samaguri P.S. Case No. 30/2024.

7. Learned counsel for the petitioners has submitted that the petitioners are ready and willing to face trial. It is further submitted by him that respect, they approached before the learned Trial Court by engaging a counsel and filed an adjournment petition before the said Court. However, the adjournment prayer was rejected as an earlier pre-arrest bail application filed by them before the Additional Sessions Court was rejected. The Trial Court while rejecting the adjournment petition filed by the petitioners, had also issued non-bailable warrant of arrest against the present petitioners.

8. Learned counsel for the petitioners has submitted that as the petitioners are ready and willing to face trial, their custodial detention is not at all justified. However, they apprehend that on the strength of the non-bailable warrant of arrest issued by the Trial Court, they may be arrested at any point of time. Hence, they have prayed for issuance of favorable order under Section 482 of the BNSS, 2023.

9. On the other hand, learned Additional Public Prosecutor has objected to the prayer on the ground that the petitioners are shown as absconders in the charge sheet. However, he has fairly submitted that as the petitioners are willing and ready to face trial, their custodial detention may not be necessary for fair completion of the trial in PRC Case No. 220/2024.

10. Considering the submissions made by learned counsel for the petitioners as well as learned Additional Public Prosecutor, this Court is of considered opinion that as the investigation is completed and there is no allegation of any attempt on the part of the petitioners to tamper with the evidence or threaten the witness, and the petitioners are ready and willing to face trial, their

custodial detention may not be justified. As the petitioners had appeared before the Trial Court through their engaged counsel on 30.10.2024, the Trial Court could have fixed another date for their personal appearance instead of issuing non-bailable warrant of arrest.

11. In view of above, it is directed that the petitioners shall appear before the Trial Court on the next date of appearance, that is 04.01.2025 and cooperate in the trial and if they do so in accordance with this order, on their appearance before the Trial Court, they shall be allowed to go on bail by the Trial Court of Rs. 30,000/- (Rupees Thirty Thousand) only each with one surety of like amount, subject to the satisfaction of the Trial Court.

12. The operation of non-bailable warrant of arrest (NBWA) issued against them shall also remain suspended till 04.01.2025.

13. With the above observation, this Anticipatory Bail application is disposed of.

JUDGE

Comparing Assistant