

GAHC010270312023



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

Case No. : AB/4082/2023

TARUN BRAHMA AND ANR
S/O RAHE BRAHMA
R/O VILL- BIJOY NAGAR,
P.S. DOTMA
DIST. KOKRAJHAR, ASSAM
PIN-783347

2: KHAGEN BASUMATARY
S/O DAMFLA BASUMATARY
R/O VILL- AMTEKA F V

P.S. BIJNI
DIST. CHIRANG
ASSAM
PIN-78339

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : J U AHMED

Advocate for the Respondent : PP, ASSAM

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

08.02.2024

Heard Mr. J. U. Ahmed, learned counsel for the petitioners. Also heard Mr. K. K. Parasar, 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 Serfanguri P.S. Case No. 45/2023, under Sections 302/201/34 of the Indian Penal Code.

The Case Diary has been received and I have perused the same.

It is submitted by Mr. Ahmed, learned counsel for the petitioners, that the petitioners are innocent and they are not at all involved in the alleged offence. It is a fact that they were the casual employees under the Forest Department, but they did not commit any offence as alleged in the F.I.R. However, after obtaining the order of interim pre-arrest bail, they appeared before the I.O. and their statements have been recorded by the I.O. under Section 161 Cr.P.C. They are still ready and willing to co-operate with the I.O. in the further investigation of the case if they are granted with the privilege of pre-arrest bail.

In this context, Mr. K. K. Parasar, learned Additional Public Prosecutor, has submitted that both the accused/petitioners are the casual employees under the Forest Department and they were not trained to use any arms etc. and from the statements of other witnesses, it is seen that they were carrying bamboo and lathi etc. However, on the day of incident, they were also present along with other Forest Guard and Forest Ranger when the incident had happened during the ambush by the Forest Department against the smuggler. However, both the accused/ petitioners have already appeared before the I.O. and their statements are also been recorded under Section 161 Cr.P.C. and thus, they are seems to be co-operating the I.O. in the investigation of the case. More so, from the materials in the Case Diary, it is seen that at the time of incident, when there was an ambush by the Forest Department, the persons, who

are stated to be smuggler, tried to resist the Forest Department when the incident had happened.

Considering the submissions made by the learned counsels for both sides and also considering the materials available in the Case Diary, I find that custodial interrogation of the accused/ petitioners are not necessary in this case and accordingly, I find it a fit case to extend the privilege of pre-arrest bail to the accused/petitioner. Accordingly, the interim pre-arrest bail order, granted to the accused/petitioner vide order dated 05.02.2024, is hereby made absolute with the same terms and conditions.

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

The Case Diary be sent back.

JUDGE

Comparing Assistant