

GAHC010276682023



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

Case No. : Bail Appln./4475/2023

JAINUR ALI @ JAYNUR ALI AND ANR
S/O LATE TAHJUDDIN
VILL- DARNIGIPARA
P.S. MUKALMUA
DIST. NALBARI, ASSAM

2: SAHAR ALI
S/O LATE TAHJUDDIN
VILL- DARNIGIPARA
P.S. MUKALMUA
DIST. NALBARI
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 08.01.2024

- 1)** Heard Mr. R. Ali, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.
- 2)** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, 1. Jainur Ali @ Jaynur Ali, and 2. Sahar Ali, who have been detained behind the bars since 29.10.2023 (for the last 70 days) in connection with Sarthebari P. S. Case No. 145/2023 under Section 365/34 of the Indian Penal Code with added Section 370 of the Indian Penal Code.
- 3)** The gist of accusation in this case is that on 12.09.2023, one Abdul Barek had lodged an FIR before the Officer-in-Charge of the Sarthebari Police Station, *inter-alia*, alleging that on 05.09.2023 at about 8.30 am, the accused persons named in the FIR namely, 1. Jesmina Khatun, 2. Sajida Khatun, and 3. Fulchan Ali had taken away the minor daughter of the first informant, namely, Rehena Parbin when she was coming back from school and she did not return home.
- 4)** Learned counsel for the petitioners has submitted that the present petitioners are not in anyway involved in the offence alleged in the FIR.
- 5)** It is also submitted by learned counsel for the petitioners that one of the named accused in the FIR namely, Sajida Khatun has already been released on anticipatory bail by a coordinate Bench of this Court in AB Case No. 3411/2023.
- 6)** Learned counsel for the petitioners has further submitted that the

petitioners are permanent resident of Darangi Para Village under Mukalmua and they have been detained behind the bars for last 70 days and they shall cooperate in the investigation, if they are allowed to go on bail.

7) On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioners on the ground that this case involves an organized racket involved in human trafficking.

8) It is also submitted by learned Additional Public Prosecutor that though one Jesmina Khatun has been recovered but one Rehena Prabin is yet to be recovered.

9) It is also submitted by learned counsel for the petitioners that one of the main accused, namely, Anwar Hussain has already been arrested and both the present petitioners in their statement made under Section 161 of the Code of Criminal Procedure, 1973, have stated that they went to railway station from where they were arrested and learned Additional Public Prosecutor submits that there are materials on record to show that the present petitioners had links with the main accused and therefore, at this stage when one of the victims is yet to be recovered, he opposes the grant of bail to the present petitioners.

10) I have considered the submissions made by the learned counsel for the parties and have perused the materials available on record including the case diary of Sarthebari P. S. Case No. 145/2023. On perusal of the case diary it appears that though the main accused namely, Anwar Hussain has been arrested and his statement has been recorded, however, he has not implicated any of the present petitioners in his statement under Section 161 of the Code of Criminal Procedure, 1973.

11) Moreover, the only statement linking the present petitioners with the main accused Anwar Hussain in the case diary is that the present petitioners

showed their railway ticket to the main accused Anwar Hussain and the petitioner no.2 namely, Sahar Ali used to call Anwar Hussain over telephone occasionally, apart from that no material is there on record against the present petitioners.

12) Considering the materials in the case diary at this stage against the present petitioners as well as considering the fact that the present petitioners are already detained behind the bars for last 70 days, and one of the co-accused has already been granted anticipatory bail by a coordinate Bench of this Court, their further custodial detention does not appear to be necessary if they otherwise cooperate in the investigation for fair completion of investigation of Sarthebari P. S. Case No. 145/2023.

13) In view of the above, the petitioners, namely, 1. Jainur Ali @ Jaynur Ali, and 2. Sahar Ali, are hereby allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only) each with one surety of like amount subject to the satisfaction of the learned Special Judge, Barpeta with the following conditions:

- i. That the petitioners shall continue to appear before the Trial Court on each and every date fixed by the Trial Court; and
- ii. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any witnesses or any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts of the case

With the above observation, this bail application is accordingly disposed of.

JUDGE

Comparing Assistant