

GAHC010288662023



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

Case No. : AB/4285/2023

KAZI NOOR HUSSAIN AND ANR
S/O LATE KAZI MAHMOD ALI
R/O VILL- BASHBARI PART-I, P.S. ALGAPUR,
DIST. HAILAKANDI, ASSAM

2: AFTAB UDDIN KAZI
S/O LATE MOTOSIN ALI KAZI
R/O VILL- BASHBARI PART-II
P.S. ALGAPUR
DIST. HAILAKANDI
ASSA

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N HAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

11.01.2024

Heard Mr. S.R. Barbhuiya, learned counsel for the applicants and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with the **Algapur P.S. Case No.**

165/2023, under Sections 120[B]/ 406/ 416/ 420/ 427/ 468/ 34 of the IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicants namely, **Kazi Noor Hussain and Aftab Uddin Kazi** for grant of pre-arrest bail.

3. The said case has been registered on the basis of one F.I.R. lodged by one Abdul Sattar Kazi, on 19.07.2023. The essence of allegation made in the FIR is that the informant entered into an agreement with his nephew, Kazi Abdul Karim, fixing the consideration at Rs. 2,16,500/-, but the applicants have prepared two Bayna Nama fraudulently and took his signature thereon and though a sum of Rs. 2,00,000/- was paid as advance, yet, the same was taken away by the applicant No. 2.

4. Mr. Barbhuiya, learned counsel for the applicants submits that the applicants are innocent and no way involved with the offence alleged in the FIR and that they are ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, by producing the Case Diary before this Court, Mr. Lahkar, learned Additional Public Prosecutor submits that the materials collected so far in the case diary, reveals the complicity of the applicants with the offence alleged in the FIR, his custodial interrogation is necessary and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the Case Diary produced before this Court, with the assistance of learned Additional Public Prosecutor.

7. The case diary indicates that the IO has achieved significant

progress of the case. That being so custodial interrogation of the applicants seems to be not warranted here in this case.

8. In view of above and considering the nature of accusation as well as the punishment prescribed for the same and also considering the submissions of learned counsel of both sides, this Court is of the view that further custodial interrogation of the applicants may not be required, in the interest of investigation.

9. Accordingly, it is provided that in the event of arrest of the applicant, in connection with the **Algapur P.S. Case No. 165/2023**, under Sections 120[B]/ 406/ 416/ 420/ 427/ 468/ 34 of the IPC, they shall be enlarged on pre-arrest bail, on their executing a bond of Rs. 50,000/- each only, with one surety of like amount to the satisfaction of the arresting authority.

10. The above privilege is, however, subject to the following conditions:

(i) that the applicant shall make themselves available for interrogation by the Investigating Officer as and when required;

(ii) that the applicant 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 their from disclosing such facts to the Court or to any police officer; and

(iii) that the applicant shall not leave the jurisdiction of the learned **Chief Judicial Magistrate, Hailakandi**, without prior permission.

11. Case diary be returned.

JUDGE

Comparing Assistant