GAHC010168252020

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

Case No. : AB/3393/2020

DIPANKAR SARMAH AND ANR
S/O LEKHAN SARMAH, R/O VILL-BILOTIA, P.O.-MACHKHOWA, P.S.-DHEMAJI, DIST-DHEMAJI, PIN-787058

2: LEKHAN SARMAH
S/O LATE GUNADEV SARMAH
R/O VILL-BILOTIA
P.O.-MACHKHOWA
P.S.-DHEMAJI
DIST-DHEMAJI
PIN-78705

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. S BORTHAKUR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE HITESH KUMAR SARMA

ORDER

Date : 15-12-2020

Heard Mr. S Borthakur, learned counsel for the petitioners. Also heard Mr. MP Goswami, learned Additional Public Prosecutor, appearing for the State respondent

assisted by Mr. NM Hazarika, learned counsel for the informant.

This is an application, filed under Section 438 of the Cr.PC. seeking pre-arrest bail of the petitioners, namely, ***1. Dipankar Sarmah*** and ***2. Lekhan Sarmah,*** in connection with ***Dhemaji P.S. Case No. 530/2020*** registered under Sections 323/354/392/427 of the IPC.

Perused the case diary produced before this Court.

The learned counsel for the petitioners has submitted that the informant and two others went to the house of the accused petitioners on their own to demanded return of money allegedly taken from the informant as loan by the petitioners.

The learned counsel for the informant has exhibited an agreement between the parties as regard the loan involved in this case. He has also referred to some medical papers to indicate that CT-Scan has been done of the injured and some swelling, etc has been found. On the other hand, the medical reports, available in the case diary show that the injured sustained simple injuries caused by blunt weapon.

The learned counsel for the informant has also submitted that the petitioners have outraged the modesty of the victim/informant and her two companions by tearing off their wearing clothes.

The fact as appears from the materials in the case diary indicates that there had taken place a quarrel in physical form between the parties and therefore, there is no specific instance in the case diary to indicate that the petitioners had, in fact, outraged the modesty of the victim/informant or intended to do so.

Whatever it may be, the entire episode revolves around the fact of taking a loan by the petitioner No. 2 and not returning the same.

The learned counsel for the petitioners has also referred to the cross FIR filed by the wife of the petitioner No. 2 alleging that she was assaulted by the informant and her companions at her own house at the time of the alleged occurrence.

Considering the rival claims of the parties, as well as the nature of the injuries and the fact that the alleged loan was taken under an agreement, this Court is of the view that custodial interrogation of the petitioners is not necessary in the interest of investigation of the

case.

The petitioners are already on interim pre-arrest bail, vide order, dated 23.11.2020 and they are not alleged to have misused the liberty granted to them.

Accordingly, the interim pre-arrest bail granted to the petitioners, vide order, dated 23.11.2020 is made ***absolute*** on the same terms and conditions.

Return the case diary.

The petition stands disposed of accordingly.

JUDGE

Comparing Assistant