

GAHC010014912024



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

Case No. : AB/196/2024

NASIR ALI
S/O LATE JHARU SHEIKH
R/O VILL- ROWTA PART-II
P.O. MADHUSHOULMARI
P.S. AND DIST. DHUBRI, ASSAM

2: SAMSUL HOQUE
S/O NASIR ALI
R/O VILL- ROWTA PART-II
P.O. MADHUSHOULMARI
P.S. AND DIST. DHUBRI
ASSAM

3: HAMIDUL HOQUE
S/O NASIR ALI
R/O VILL- ROWTA PART-II
P.O. MADHUSHOULMARI
P.S. AND DIST. DHUBRI
ASSAM

4: SAMIDUL HOQUE
S/O NASIR ALI
R/O VILL- ROWTA PART-II
P.O. MADHUSHOULMARI
P.S. AND DIST. DHUBRI
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, GOVT. OF ASSAM

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

29.01.2024

Heard Ms R Choudhury, learned counsel for the petitioners, 1) Nasir Ali, 2) Samsul Hoque, 3) Hamidul Hoque, and 4) Samidul Hoque.

2. The petitioners have filed this application under Section 438 CrPC, with prayer for pre-arrest bail, as they are apprehending arrest in connection with PRC Case No. 4289/2022, arising out of Dhubri PS Case No. 2090/2019, under Sections 143/379/353 IPC, read with Sections 11(i)(a)(b)(d) of the Cruelty to Animal Act.
3. Heard Ms B Bhuyan, learned Additional Public Prosecutor for the State of Assam.
4. I have considered the submissions at the Bar with circumspection.
5. It is submitted at the Bar that the petitioner No. 1 is 73 years old. It is submitted that in an omnibus manner, charge sheet has been laid against the petitioners. It is also submitted that the petitioner No. 1 is the father and the petitioner Nos. 2, 3 and 4 are the three sons of the petitioner No. 1. The petitioners are willing to cooperate with the trial. They are apprehending arrest as they have been shown as absconders in the charge sheet.

6. The allegation against the petitioners is that they are cattle smugglers, who deterred

the Police party from discharging their duty on 29.11.2019, along with the accused named in the FIR.

7. It is submitted that the petitioners were not named in the FIR, but charge sheet has been laid against them.

8. I have considered the submission that the petitioners are willing to cooperate with the trial. A pragmatic view is also taken.

9. The learned counsel has also relied on a decision of Hon'ble the Supreme Court in *Bharat Chaudhary & Another –Vs- State of Bihar & Another*; reported in (2003) 8 SCC 77, wherein it has been held and observed that-

“7. From the perusal of this part of Section 438 of the Crl. P.C., we find no restriction in regard to exercise of this power in a suitable case either by the Court of Sessions, High Court or this Court even when cognizance is taken or charge sheet is filed. The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The fact, that a Court has either taken cognizance of the complaint or the investigating agency has filed a chargesheet, would not by itself, in our opinion, prevent the concerned courts from granting anticipatory bail in appropriate cases. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the concerned courts while entertaining a petition for grant of anticipatory bail and the fact

of taking cognizance or filing of charge sheet cannot by themselves be construed as a prohibition against the grant of anticipatory bail. In our opinion, the courts i.e. the Court of Sessions, High Court or this Court has the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section 438 of the Crl. P.C. even when cognizance is taken or charge sheet is filed provided the facts of the case require the Court to do so.”

10. Considering the submission that the petitioners are willing to cooperate with the trial and abide by any bail conditions to be imposed upon them and also in the light of the decision of Hon'ble the Supreme Court in *Bharat Choudhury's case (supra)*, petition is allowed. The petitioners are directed to appear before the learned trial Court within one month from today and the petitioners shall be granted bail on furnishing bail bonds of Rs. 30,000/- each with a suitable surety each of the like amount, to the satisfaction of the learned trial Court. The learned trial Court may impose conditions, which the Court may deem fit and proper.

11. Bail Application stands disposed of.

JUDGE

Comparing Assistant