

GAHC010040352024



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

Case No. : AB/518/2024

ABUL FAJAL BARBHUIYA
S/O MUJIBUR RAHMAN BARBHUIYA
R/O - PANCHGRAM, P.O AND P.S - PANCHGRAM, DIST- HAILAKANDI,
ASSAM, PIN-788802

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. S B CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

ORDER

15.03.2024

Heard Ms. S.B. Choudhury, learned counsel for the applicant and also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under Section 438 Cr.P.C. is preferred by the applicant, namely,

Abul Fajal Barbhuiya, who has been apprehending arrest in connection with Panchgram P.S. Case No.11/2024, under Section 120B/379/420 IPC, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Chandra Moni Sinha, ASI of Police, Panchgram P.S., on 24.01.2024. The essence of allegations made in the aforesaid FIR is that during Naka checking at about 7:30 p.m. on 24.01.2024, he has found one Truck, bearing Registration No.AS-26AC-1382, which was coming from Algapur side towards Panchgram and accordingly, signal was given, but the driver managed to flee away with the Truck. Thereafter, they have intercepted the same and having checked the same, they found 33 nos. of bags of betel nut suspected to be of foreign origin and accordingly, seized the same in presence of witnesses.

4. Ms. Choudhury, learned counsel for the applicant submits that the present applicant is the owner of the betel nuts and he has filed a petition before the learned Court below i.e. the learned Chief Judicial Magistrate, Hailakandi, seeking custody of the seized betel nuts and vide order dated 26.02.2024, the learned Court below was pleased to release the seized betel nuts in the custody of the applicant. Ms. Choudhury further submits that the applicant is innocent and no way involved with the offence alleged in the FIR and that he is ready to cooperate with the investigating agency and therefore, it is contended to allow this petition.

5. On the other hand, Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, has produced the case diary before this Court and fairly submits that the materials collected so far in the case diary are inadequate to show the complicity of the applicant with the offence alleged, as the witnesses so far examined by the I.O. are all seizure witnesses.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Lahkar, learned Additional P.P. and also perused the order dated 26.02.2024 passed by the learned Chief Judicial Magistrate, Hailakandi, in Panchgram P.S. Case No.11/2024, by which the learned Court below has released the

seized 33 nos. of bags of betel nuts in the custody of the present applicant.

7. Having considered the submission of learned Advocates of both sides and also considering materials collected so far in the case diary, custodial interrogation of the applicant seems to be not warranted here in this case and therefore, this Court is inclined to allow this petition. It is provided that in the event of arrest of the applicant, namely, Abul Fajal Barbhuiya, in connection with Panchgram P.S. Case No.11/2024, under Section 120B/379/420 IPC, he shall be enlarged on pre-arrest bail on his executing a bond of ₹ 50,000/- with one surety of the like amount to the satisfaction of the arresting authority. The above privilege is, however, subject to the following conditions:-

- (i) The applicant shall make himself available for interrogation by the Investigating Officer as and when required;
 - (ii) 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 him from disclosing such facts to the Court or to any police officer; and
 - (iii) The applicant shall not leave the jurisdiction of the learned C.J.M., Hailakandi, without prior permission.
8. In terms of above, this anticipatory bail application stands disposed of.
9. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant