

GAHC010038952024



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

Case No. : AB/460/2024

BHARATI DEVI AND ANR.
W/O LATE MANIK CH. SARMA
R/O HOUSE NO. 10, OLD AEI ROAD, CHAKRADHAR VILLA, CHANDMARI,
GUWAHATI-3,
P.S. CHAND, DIST. KAMRUP (M),
ASSAM, PH. NO. 863847108

2: BHAGABAN SARMA
S/O LATE KRISHNA KANTA SARMA
R/O HOUSE NO. 10
OLD AEI ROAD
CHAKRADHAR VILLA
CHANDMARI
GUWAHATI-3

P.S. CHAND
DIST. KAMRUP (M)
ASSAM
PH. NO. 86384710

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS S AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

07.03.2024

Heard Mr. B. Borah, learned counsel for the applicants 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 two applicants, namely, Smt. Bharati Devi and Shri Bhagaban Sarma, who have been apprehending arrest in connection with Kamalpur P.S. Case No.21/2024, under Section 420/406/34 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 Majnur Ali, on 20.12.2023. The essence of allegations made in the aforesaid FIR is that on 09.01.2024, one Bhagaban Sarma and Bharati Devi came to the residence of the informant and entered into an agreement for selling a plot of land measuring 3 bighas 3 kathas 18 lechas, at the rate of ₹ 5,00,000/- per bigha and received an advance amount of ₹ 7,50,000/- from him and they have not been executing the sale deed since then and on 15.11.2023, at 11 O'clock while he called them, then they refused to sell the land and also refused to return money.

4. Mr. Borah, learned counsel for the applicants submits that the dispute between the informant and the applicants are civil in nature and at best a suit for specific performance of contract may lie and that the allegation of receiving a sum of ₹ 7,50,000/- is false and in fact, they have received a sum of ₹ 1,00,000/- only and that the sale deed could not be executed as some dispute arose in respect of the price of the land and it was ₹ 5,00,000/- per katha, but in the agreement it has been mentioned that ₹ 5,00,000/- was in respect of per bigha land and that they have received only a sum of ₹ 1,00,000/- as advance, whereas in the agreement it has been mentioned that ₹ 7,50,000/- has been received by the them and that the applicants are ready to return the amount of ₹ 1,00,000/- and they

are also 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 referring to the agreement, collected by the I.O., Mr. Lahkar pointed out that the signatures of the applicants in page-1 of the agreement and in page-2 and 3 are different. However, Mr. Lahkar also pointed out that some materials have been collected by the I.O. in support of the allegation made in the FIR and on the basis of the said materials, Mr. Lahkar has opposed the petition.

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.

7. In view of the materials collected so far in the case diary and also in view of the submission of Mr. Lahkar, learned Additional P.P., in respect of the agreement collected from the informant by the I.O. and also in view of the nature and gravity of the offence and the punishment prescribed for the same, custodial interrogation of the applicants 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 applicants, namely, Smt. Bharati Devi and Shri Bhagaban Sarma, in connection with Kamalpur P.S. Case No.21/2024, under Section 420/406/34 IPC, they shall be enlarged on pre-arrest bail on their executing a bond of ₹ 50,000/- each, 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 applicants shall make themselves available for interrogation by the Investigating Officer as and when required;
- (ii) The applicants 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 applicants shall not leave the jurisdiction of the learned C.J.M., Kamrup, Amingaon, 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