

GAHC010261862022



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

Case No. : Bail Appln./3597/2022

MD SAMSUL HOQUE
S/O MD. JABED ALI
R/O VILL- NO. 2 KEKANKUCHI,
P.S. MUKALMUA
DIST. NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S HOQUE

Advocate for the Respondent : PP, ASSAM

Linked Case : Bail Appln./122/2023

MD. JOHOR ALI AND 3 ORS.
S/O- LATE MOGOR ALI
R/O- SALMARA
P.S. SUWALKUCHI
DIST. KAMRUP(R)
ASSAM

2: AYUB ALI
S/O- JOHOR ALI
R/O- SALMARA
P.S. SUWALKUCHI
DIST. KAMRUP(R)
ASSAM

3: MD. RABIUL HOQUE
S/O- LATE AMZAD ALI
R/O- SALMARA (DURAMARI)
P.S. SUWALKUCHI

DIST. KAMRUP(R)
ASSAM

4: MD. JAHANGIR ALI
S/O- MD. AJIBOR ALI
R/O- KALTOLI PATHAR
P.S. SUWALKUCHI
DIST. KAMRUP(R)
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P.
ASSAM

Advocate for : MR D J DEKA
Advocate for : PP ASSAM appearing for THE STATE OF ASSAM

EFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 18-01-2023

Heard Mr. S. Hoque, learned counsel for the accused-petitioner in B.A. no. 3597/2022; Mr. D.J. Deka, learned counsel for the accused-petitioners in B.A. no. 122/2023; and Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam.

2. By the application, B.A. no. 3597/2022 under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioner viz. Md. Samsul Hoque has prayed for his release on bail in connection with Guwahati G.R.P.S. Case no. 153/2022, registered under Sections 120B/364/344/34, Indian Penal Code [IPC].

2.1. By the application, B.A. no. 122/2023 under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioners viz. [1] Md. Johor Ali, [2] Ayub Ali, [3] Md. Rabiul Hoque and [4] Md. Jahangir Ali have prayed for their release on bail in connection with Guwahati G.R.P.S. Case no. 153/2022, registered under Sections 120B/364/344/34, Indian Penal Code [IPC].

3. The First Information Report [FIR] is lodged by an Assistant Sub-Inspector of Police, attached to Guwahati Railway Police Station. As per the FIR, one Joyvardhan Kumar, a resident of East Champaran District, Bihar, boarded the Lower Awadh Assam Express at Dimapur Railway Station in order to proceed to Muzapharpur, Bihar on 31.07.2022. During the course of journey, the mobile phone bearing no. 70794-00357 of Joyvardhan Kumar was found active till Amingaon but from the stage beyond Amingaon, his mobile phone was found switch off. A missing complaint was earlier lodged by one Sri Harshavardhan Kumar, the elder brother of Joyvardhan Kumar. On 04.11.2022, Sri Harshavardhan Kumar informed the Guwahati Railway Police Station that a number of amounts were withdrawn from different places with the use of the mobile number of Joyvardhan Kumar. It was suspected that some had abducted Joyvardhan Kumar and confined him at some place.

4. Mr. Goswami, learned Additional Public Prosecutor who has received the case diary, has submitted that all these 5 [five] accused-petitioners have been found connected with the withdrawal of monies, as alleged in the FIR, and also with the abduction and subsequent murder of the victim, Joyvardhan Kumar.

5. Mr. Hoque, learned counsel for the accused-petitioner, Md. Samsul Hoque has submitted that though the mobile handset of Joyvardhan Kumar was recovered from the house of the accused-petitioner, Md. Samsul Hoque but he was not connected in any manner with the alleged crime as the accused-petitioner, Md. Ayub Ali had handed over the mobile handset of the victim of Joyvardhan Kumar to him for repairing. Mr. Deka, learned counsel for the other 4 [four] accused-petitioners has submitted that two of them had found the dead body of the victim floating in river Brahmaputra in front of their houses and after collecting the documents and mobile handset of the victim from the dead body, they left the dead body again at river Brahmaputra and thus, none of the accused-petitioners can be implicated for the alleged death of the deceased Jayvardhan Kumar.

6. The accused-petitioner, Md. Samsul Hoque was arrested on 04.12.2022. The accused-petitioners, Md. Johor Ali and Ayub Ali were arrested on 10.11.2022 whereas the accused-petitioners, Md. Rabiul Hoque and Md. Jahangir Ali were arrested on 17.11.2022.

7. I have perused the materials available in the case diary. From the seizure list dated 09.11.2022, it is noticed that Aadhaar Card, Voter ID, Shram Card, PAN Card and Driving License belonging to the victim, Joyvardhan Kumar were recovered from the house of the accused-petitioner, Md. Rabiul Hoque as they were kept concealed in his house. Such recovery was made on the basis of the statements of the accused persons recorded under Section 161, CrPC. The mobile handset of the victim, Joyvardhan Kumar was recovered from the house of the accused-petitioner, Md. Samsul Hoque vide seizure list dated 09.11.2022. One Central Bank of India ATM Card and one State Bank of India ATM Card belonging to the victim, Joyvardhan Kumar were recovered from the possession of the accused-petitioner, Md. Jahangir Ali vide seizure list dated 16.11.2022. An amount of Rs. 30,000/- was also recovered from the possession of the accused-petitioner, Md. Jahangir Ali. As per the versions of the accused-petitioners, the dead body of the victim, Joyvardhan Kumar was found floating on river Brahmaputra. As per the FIR, the victim, Joyvardhan Kumar went missing since 31.07.2022. The seizure witnesses who witnessed the seizures, have stated that the documents which were seized from the possession/custody of the accused-petitioners, were in good condition. Meaning thereby, the ATM Cards was usable for transactions. It cannot be conceived that if the ATM Cards and the other documents were found in the dead body of a person floating in the river Brahmaputra then the same would be in usable condition. The materials *prima facie* go to indicate that the accused-petitioners were be involved in the act of abduction of the victim, Joyvardhan Kumar and his subsequent. As the investigation of the case is still in progress with no trace of the *corpus delicti* till date and the nature of incriminatory materials collected against the accused-petitioners who seemed to have acted in concert, I am not persuaded to reach a view that the accused-petitioners can be allowed to be released on bail at this stage of investigation, as their release on bail at this stage of investigation is likely to affect the further investigation of the case in an adverse manner. In such view of the matter, the prayers for bail of the accused-petitioners stand rejected.

JUDGE

Comparing Assistant