

GAHC010012342023



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

Case No. : AB/147/2023

NOSIR UDDIN BARBHUIYA @ NOSIR UDDIN AND 2 ORS.
S/O LT. SUNAHOR ALI BARBHUIYAN R/O VILL. BOROITOLI PART II P.O.
AND P..S KALAIN PIN-788815 DIST. CACHAR ASSAM

2: NIZAM UDDIN @ LAL
S/O LT. ABDUL MANNAN R/O VILL. BOROITOLI PART II P.O. AND P..S
KALAIN PIN-788815 DIST. CACHAR ASSAM

3: ZIABUR RAHMAN BARBHUIYAN @ JIAUR RAHMAN
R/O VILL. BOROITOLI PART II P.O. AND P..S KALAIN PIN-788815 DIST.
CACHAR ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S A HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 20-01-2023

Heard Mr. D.J. Haloi, learned counsel for the petitioners and Mr. M.P.

Goswami, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioners viz. [1] Nosir Uddin Barbhuiya @ Nosir Uddin, [2] Nizam Uddin @ Lal and [3] Ziabur Rahman Barbhuiyan @ Jiaur Rahman have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Kalain Police Station Case no. 447/2022, registered for offences punishable under Sections 395/397/427/307, Indian Penal Code [IPC] for second occasion after rejection of their earlier bail application, A.B no. 3430/2022, preferred along with 6 [six] other persons, by an order dated 05.12.2022, after perusal of the materials available in the case diary, produced on that day before the Court. The earlier bail application under Section 438, CrPC was preferred by following 9 [nine] nos. of petitioners viz. [1] Jiabur Rahman Barbhuiya @ Jiaur Rahman, [2] Nosir Uddin Barbhuiya @ Nosir Uddin, [3] Jamir Uddin, [4] Monowar Hussain, [5] Salim Uddin, [6] Mohim Uddin @ Moyum Uddin, [7] Najmul Hoque Barbhuiya @ Najrul Hoque, [8] Azmul Hoque Barbhuiya @ Ajrul Hoque, and [9] Nizam Uddin @ Lal.

3. As per the First Information Report [FIR], the informant was intercepted by the 11 [eleven] nos. of accused persons, named in the FIR, at around 12.30 a.m. in the night intervening 25.09.2022 and 26.09.2022. As per the FIR, the informant was proceeding at that time towards his house at Village - Boroitoli part – II, Kalain by driving his vehicle bearing registration no. AS-11-K-9624. The accused persons intercepted his vehicle by blocking the road by another vehicle bearing registration no. ML-11-2618 [Alto] and thereafter, the accused persons had allegedly assaulted him resulting into causing severe injuries to the person.

4. During the course of investigation, two of the 11 [eleven] accused persons, named in the FIR viz. [1] Nazir Uddin @ Nazir Hussain, and [2] Taibur Rahman Barbhuiya were arrested on 22.10.2022 and 05.11.2022 respectively.

5. Mr. Haloi, learned counsel for the petitioners has submitted that the petitioners are innocent and falsely implicated in Kalain Police Station Case no. 447/2022. It is submitted that on the alleged date of occurrence, two other accused persons who are the relatives of these petitioners, met with an accident with the informant's car and as a result, the informant's car was damaged and for the same, the informant demanded a sum of Rs. 1,00,000/- from the said two accused persons, named in the FIR, with the threat that the incident would be telecast in the informant's news portal, *The News Plus* in a different manner. The said two accused persons refused to pay the informant the money demanded by him. It is contended by Mr. Haloi that in the altercation ensued between the said two accused persons, who were already arrested and released subsequently on bail, and the informant, there was some physical obstructions by the said two arrested accused persons. However, the petitioners were not present at the alleged time of occurrence but on hearing commotion on the road near their house, they arrived at the place of occurrence only for knowing about the incident.

6. The earlier bail application, preferred by the petitioner, A.B. no. 3430/2022 came up for consideration on 05.12.2022. On that day, the concerned case diary was produced. After perusal of the materials in the case diary, this Court while declining the prayer for pre-arrest bail for these 3 [three] petitioners, the benefit of pre-arrest bail were granted to other 6 [six] petitioners therein, who were the petitioner no. 3 to the petitioner no. 8. The relevant excerpts of the order dated 05.12.2022 are quoted herein for ready reference :

“6. The materials in the case diary, collected during the course of the investigation carried out so far, go to indicate that the informant was waylaid by the group of assailants at around 12.30 a.m. in the night intervening 25.09.2022 and 26.09.2022. The informant was inside his vehicle bearing registration no. AS-11-K-9624, alone at that time.

7. In the incident, the vehicle of the informant had got damaged and the informant also received number of injuries on his person. The statements of the independent witnesses, recorded under Section 161[1] CrPC, have corroborated about the incident of waylaying the vehicle of the informant by a group of assailants and assault on him. In the statements of the independent witnesses, there is no mention about Jamir Uddin [the petitioner no. 3], Monowar Hussain [the petitioner no. 4], Salim Uddin [the petitioner no. 5], Mohim Uddin @ Moyum Uddin [the petitioner no. 6], Najmul Hoque Barbhuiya @ Najrul Hoque [the petitioner no. 7], and Azmul Hoque Barbhuiya @ Ajrul Hoque [the petitioner no. 8], playing overt roles in the attack on the informant. The independent witnesses in their statements, have identified amongst the group of assailants [1] Jiabur Rahman Barbhuiya @ Jiaur Rahman [the petitioner no. 1], [2] Nosir Uddin Barbhuiya @ Nosir Uddin, [the petitioner no. 2], and [3] Nizam Uddin @ Lal [the petitioner no. 9] and these petitioners have been were identified in the group of assailants who had attacked the informant and who had played overt roles in the attack.

8. Having regard to the nature of complicity and involvement of Jiabur Rahman Barbhuiya @ Jiaur Rahman [the petitioner no. 1], Nosir Uddin Barbhuiya @ Nosir Uddin [the petitioner no. 2] and Nizam Uddin @ Lal [the petitioner no. 9] in the attack carried out on the informant, this Court is of the considered view that the benefit of pre-arrest bail cannot be extended to the petitioner no. 1, petitioner no. 2 and petitioner no. 9.

9. In so far as the other petitioners are concerned, as the independent witnesses have not attributed any overt act in respect of them, this Court is of considered view that the benefit of pre-arrest bail can be extended to the petitioner no. 3 to the petitioner no. 8, viz. [1] Jamir Uddin [the petitioner no. 3]; [2] Monowar Hussain [the petitioner no. 4]; [3] Salim Uddin [the petitioner no. 5]; [4] Mohim Uddin @ Moyum Uddin [the petitioner no. 6]; [5] Najmul Hoque Barbhuiya @ Najrul Hoque [the petitioner no.

[7]; and [6] Azmul Hoque Barbhuiya @ Ajrul Hoque [the petitioner no. 8]; in connection with Kalain Police Station Case no. 447/2022.”

7. It is settled that after rejection of application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete. The grounds cited in this second application on behalf of the petitioner do not appear to be of any substance for re-consideration of the earlier order dated 05.12.2022 passed in A.B. no. 3430/2022.

8. Having heard the learned counsel for the parties and the grounds urged in the instant application, preferred for the second occasion, this Court does not find any ground for reconsideration of the earlier order dated 05.12.2022. Thus, the grounds urged in this second application, lacks merit and the same is not entertained. Consequently, the instant application stands dismissed.

JUDGE

Comparing Assistant