

GAHC010013082023



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

Case No. : AB/217/2023

SAHID UDDIN AND ANR
S/O NASIR UDDIN
VILL- BHABANIPUR, WARD NO. 9, SONARI TOWN, P.S. SONARI, DIST.
CHARAIDEO
PIN-785690, ASSAM

2: AFTER HUSSAIN
S/O NASIR UDDIN
VILL- BHABANIPUR
WARD NO. 9
SONARI TOWN
P.S. SONARI
DIST. CHARAIDEO
PIN-785690
ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N H MAZARBHUIYAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 22-03-2023

Mr. H.R.A. Choudhury, learned Senior Counsel assisted by Ms. R. Deka, learned counsel for the petitioners and Mr. K.K. Parasar, 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] Sahid Ahmed and [2] After Hussain have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Sonari Police Station Case no. 148/2022, registered for the offences under Sections 325/326/307/379/34, Indian Penal Code [IPC] for the second occasion after rejection of the petitioners' previous pre-arrest bail application, A.B. no. 3277/2022 by an order dated 16.12.2022 after perusal of the materials available in the case diary, produced on that date by the learned Additional Public Prosecutor.

3. In the First Information Report [FIR], both the petitioners, who are brothers by relation, are named along with another brother by relation, Md. Siabuddin. The allegations against them were with regard to physical assault on one Md. Khasrul Islam at around 10-00 a.m. on 03.10.2022. The informant has further alleged that apart from assaulting his elder brother, Md. Khasrul Islam, the assailants had also assaulted him and his younger brother, Md. Faiz Ahmed with an iron rod.

4. When the previous pre-arrest bail application, A.B. no. 3277/2022 came up for consideration on 16.12.2022, this Court after perusal of the materials in the case diary, had recorded that the injured Md. Khasrul Islam had to be admitted in the ICU following the assault and was in the hospital after the assault for a long period. It was further recorded that the health condition of the injured was not fully improved and he was still not in a position to give any statement to the I.O., who had visited him a number of times. Recording that the injuries sustained by the injured were on his head for which the injured had to undergo brain surgery and considering the eye-witness accounts who had asserted the presence of the present two petitioners along with the other arrested co-accused, Siabuddin at the place of occurrence with specific implication that there was continuous assault on the injured by the two petitioners, the previous pre-arrest bail application was rejected.

5. Mr. Parasar, learned Additional Public Prosecutor has produced the case diary and the

same contains the injury report of the injured. As per the injury report, the injured was admitted in the hospital on 03.10.2022 and was discharged on 19.10.2022. As regards the nature of injury, the injury report has indicated that the injured sustained grievous injuries including one on his head.

6. 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 16.12.2022 passed in A.B. no. 3277/2022.

7. Having considered the nature of grievous injuries suffered by the injured in the alleged assault, this Court has not found any good and sufficient reason for re-consideration of the earlier order dated 16.12.2022. Finding the instant application devoid of any merit, the same is liable to be rejected and it is, thus, accordingly rejected.

JUDGE

Comparing Assistant