

GAHC010013782023



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

Case No. : AB/269/2023

LATIF ALI AND 8 ORS.

S/O- KURBAN ALI, R/O- VILL- KURIHAMARI, P.S- SIALMARI, DIST-
NALBARI, ASSAM

2: MAJID ALI

S/O- LATE KASEM ALI
R/O- VILL- KURIHAMARI
P.S- SIALMARI
DIST- NALBARI
ASSAM

3: ALKASH ALI

S/O- MAJID ALI
R/O- VILL- KURIHAMARI
P.S- SIALMARI
DIST- NALBARI
ASSAM

4: MAKROM ALI

S/O- LATE RAHIMUDDIN
R/O- VILL- KURIHAMARI
P.S- SIALMARI
DIST- NALBARI
ASSAM

5: ISLAM @ ISMAIL ALI

S/O- MAKROM
R/O- VILL- KURIHAMARI
P.S- SIALMARI
DIST- NALBARI
ASSAM

6: HAJARAT ALI @ HASTHA ALI

S/O- LASKAR ALI
R/O- VILL- KURIHAMARI

P.S- SIALMARI
DIST- NALBARI
ASSAM

7: JIYARUL HOQUE
S/O- ISAN ALI
R/O- VILL- KURIHAMARI
P.S- SIALMARI
DIST- NALBARI
ASSAM

8: LOKMAN ALI
S/O- LATE AJIT ALI
R/O- VILL- KURIHAMARI
P.S- SIALMARI
DIST- NALBARI
ASSAM

9: JALAL ALI
S/O- SIRAJ ALI
R/O- VILL- KURIHAMARI
P.S- SIALMARI
DIST- NALBARI
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR A K AZAD

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; Mr. K.K. Parasar, learned Additional Public Prosecutor for the respondent State of Assam; and Mr. D. Sarmah, learned counsel for the informant.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the

petitioners viz. [1] Latif Ali; [2] Majid Ali; [3] Alkash Ali; [4] Makrom Ali; [5] Islam @ Ismail Ali; [6] Hajarat Ali @ Hastha Ali; [7] Jiyarul Haque; [8] Lokman Ali; and [9] Jalal Ali, have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Sialmari Police Station Case no. 40/2022, registered for offences punishable under Sections 147/148/149/325/326/436/427, Indian Penal Code [IPC] for the second occasion after rejection of the petitioners' previous pre-arrest bail application, A.B. no. 3047/2022 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. These 9 [nine] nos. of persons along with 16 [sixteen] other petitioners had preferred a pre-arrest bail application earlier, which was registered and numbered as A.B. no. 3046/2022 and the said application came up for consideration on 16.12.2022. After hearing the learned counsel for the parties and after perusal of the materials available in the case diary, produced on that day, this Court allowed the pre-arrest bail prayers in respect of 16 [sixteen] nos. of petitioners therein while declining the prayers for pre-arrest bail in respect of the present petitioners. For ready reference, the relevant parts of the order dated 16.12.2022 are quoted hereinbelow :-

“2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioners viz. [1] Kurban Ali, [2] Latif Ali, [3] Majid Ali, [4] Alkash Ali, [5] Maser Ali, [6] Jahuruddin, [7] Makrom Ali, [8] Chand Mohammad @ Sanu, [9] Islam @ Ismail Ali, [10] Sonabor Ali, [11] Sadar @ Sadar Ali, [12] Hajarat Ali @ Hastha Ali, [13] Jiyarul Haque, [14] Lokman Ali, [15] Ajibar, [16] Asraf Ali, [17] Asadullah, [18] Nashir Uddin [19] Usman Ali, [20] Eusuf Ali, [21] Surman Ali, [22] Lalchand, [23] Jalal Ali, [24] Sarbesh Ali and [25] Sahjahan Ali have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Sialmari Police Station Case no. 40/2022, registered for offences punishable under Sections 147/148/149/325/326/436/427, Indian Penal Code [IPC].

3. The names of all the accused-petitioners herein have figured in the First Information Report [FIR] lodged on 19.09.2022 in connection with Sialmari Police Station Case no. 40/2022. As per the FIR, at about 08-00 a.m. on 19.09.2022,

the accused persons forming an unlawful assembly and arming themselves with sticks, daggers, axes, daos and other deadly weapons, criminally trespassed into the house premises of the informant and assaulted the informant's father-in-law [Samsul Ali] by sharp weapons. As a result, Samsul Ali sustained grievous injuries. Thereafter, the group of assailants set two houses of the informant on fire. As a result, about 50 Mon [1 mon = 40 Kg] of jute got destroyed along with all other articles inside the houses. The group of assailants also destroyed/burnt the few other houses of the informant's relatives viz. Saidar Ali, Sahidul, Sagar Ali, Muktar Ali and Hanif Ali.

4. Mr. B. Sharma, learned Additional Public Prosecutor who has received the case diary and Mr. D. Sharma, learned counsel appearing for the informant have pointed out to the materials regarding the destructions/damages caused by the group of assailants. The photographs available in the case record go to depict that few of the houses were completely destroyed/burnt. However, contrary to the allegations in the FIR, the injured Samsul sustained simple injury, as per the medical report available in the case diary. In so far as the damages/burning of the houses are concerned, the statements of the witnesses are perused and from a close look at the statements, it has emerged that the following accused persons i.e. [i] Latif Ali [petitioner no. 2], [ii] Majid Ali [petitioner no. 3], [iii] Alkash Ali [petitioner no. 4], [iv] Makrom Ali [petitioner no. 7], [v] Islam Ali [petitioner no. 9], [vi] Hazarat Ali [petitioner no. 12], [vii] Jiyarul Haque [petitioner no. 13], [viii] Lokman Ali [petitioner no. 14] and [ix] Jalal Ali [petitioner no. 23] were found involved in the act of arson.

5. By order dated 17.10.2022, all the petitioners were provided interim protection. In view of the emergence of the above incriminating materials in the case diary regarding complicity of the afore-mentioned 9 [nine] nos. of petitioners, collected during the course of investigation carried out so far, this Court is of the considered view that the benefit of pre-arrest bail under Section 438, CrPC cannot be extended to the following petitioners - [i] Latif Ali [petitioner no. 2], [ii] Majid Ali [petitioner no. 3], [iii] Alkash Ali [petitioner no. 4], [iv] Makrom Ali [petitioner no. 7], [v] Islam @ Ismail Ali [petitioner no. 9], [vi] Hazarat Ali @ Hastha Ali [petitioner no. 12], [vii] Jiyarul Haque [petitioner no. 13], [viii] Lokman Ali [petitioner no. 14] and [ix] Jalal Ali [petitioner no. 23].

6. It has also emerged that the remaining petitioners have appeared before the Investigating Officer of the case pursuant to the order dated 17.10.2022. In view of the

same, while recalling the interim order passed in favour of the following petitioners - [i] Latif Ali [petitioner no. 2], [ii] Majid Ali [petitioner no. 3], [iii] Alkash Ali [petitioner no. 4], [iv] Makrom Ali [petitioner no. 7], [v] Islam Ali [petitioner no. 9], [vi] Hazarat Ali [petitioner no. 12], [vii] Jiyarul Haque [petitioner no. 13], [viii] Lokman Ali [petitioner no. 14] and [ix] Jalal Ali [petitioner no. 23], the interim protections granted to the remaining petitioners i.e. [i] Kurban Ali [petitioner no. 1], [ii] Maser Ali [petitioner no. 5], [iii] Jahuruddin [petitioner no. 6], [iv] Chand Mohammad @ Sanu [petitioner no. 8], [v] Sonabor Ali [petitioner no. 10], [vi] Sadar @ Sadar Ali [petitioner no. 11], [vii] Ajibar [petitioner no. 15], [viii] Asraf Ali [petitioner no. 16], [ix] Asadullah [petitioner no. 17], [x] Nashir Uddin [petitioner no. 18] [xi] Usman Ali [petitioner no. 19], [xii] Eusuf Ali [petitioner no. 20], [xiii] Surman Ali [petitioner no. 21], [xiv] Lalchand [petitioner no. 22], [xv] Sarbesh Ali [petitioner no. 24] and [xvi] Sahjahan Ali [petitioner no. 25] by order dated 17.10.2022, are made absolute, subject to the condition nos. [i], [ii] & [iii] set forth already in the said order dated 17.10.2022.

7. The bail application stands disposed of in the aforesaid terms.”

3. 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. 3046/2022.

4. Having heard the learned counsel for the parties at length, I do not find any new ground for re-consideration of the earlier order dated 16.12.2022 as the observations made therein have not changed in any material manner till date. In such view of the matter, this pre-arrest bail application preferred for the second time is not to be entertained and accordingly, the same is dismissed.

JUDGE

Comparing Assistant