

GAHC010017022023



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

Case No. : Bail Appln./356/2023

ANUWAR HUSSAIN AND ANR
S/O HAIMUDDIN
R/O VILL- AMLAKHI, UNDER BATADRAVA P.S. IN THE DISTRICT OF
NAGAON, ASSAM, PIN CODE- 782122

2: NEKIBUR RAHMAN @ RAKIBUL HUSSAIN
S/O ABDUL ALI
R/O VILL- CHALANABARI UNDER DHING POLICE STATION
IN THE DISTRICT OF NAGAON
ASSAM
PIN CODE-78212

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 27-02-2023

Heard Mr. B.M. Choudhury, learned counsel for the petitioners as well as Mr. R.J. Baruah, learned APP for the State.

2. The petitioners, namely, (1) Anuwar Hussain, (2) Nekibur Rahman @ Rakibul Hussain, who was arrested on 04.01.2023 in connection with Session's (T1) case no.38/2022 under sections 120(B)/ 121/ 143/ 144/ 145/147/149/152/153/155/326/307/333/342/353/427/436/440/447/450/34/511 IPC read with section 3/4 PDPP Act arising out of P.R. case no.2537/2022 in connection with Batadrava P.S. case no.54/2022, is seeking regular bail by filing this application under section 439 Cr.P.C.

3. The learned APP has produced the voluminous scanned copy of the case diary and has opposed the prayer for bail on the ground that most of the witnesses and the petitioners have been enlarged on bail and it is every likelihood that they will hamper the evidence or would dissuade the witnesses who are of the same locality to not give evidence against them by intimidating them. It is also submitted that charge sheet has been submitted and the Court is not inclined to enlarge the petitioners on bail without examining the evidences available against them.

4. On a perusal of the case records as well as the materials available in the application, it appears that pursuant to order dated 21.12.2022 passed by this Court in AB 3359/2022, the Court has rejected the prayer for bail and the petitioners had surrendered before the learned trial Court on 04.01.2023 which is reflected in the trial Court records of 04.01.2023.

5. The case records otherwise reveals sufficient materials against the petitioners of participating in burning down of the Batadrava police station leading to a riot constituting around 200 people.

6. Nonetheless taking note of the conduct of the petitioners having surrendered before the learned trial Court on 04.01.2023 on a specific direction passed by the Court vide order dated 21.12.2022 passed in AB 3359/2022, whereby direction was issued to the petitioners to appear before the learned trial Court within 15 days and apply for bail.

7. Hence, the Court is of the considered opinion that the said conduct entitles the petitioners to bail. Accordingly, the Court is inclined to enlarge the petitioners, namely, (1) Anuwar Hussain, (2) Nekibur Rahman @ Rakibul Hussain on bail on furnishing a bail bond of Rs.1 lakh/- (Rupees one lakh only) each with two surety of like amount to the satisfaction of the learned Additional District Judge No.2, Nagaon, Assam. Out of two bailors, one should offer his/her immovable property as security for grant of bail.

8. Bail is granted on the following conditions:

1. The petitioners shall appear before the Court in the present case on all the dates fixed for trial.
2. The petitioners 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 Court or to any police officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.
3. The petitioners shall not obstruct the smooth progress of the

trial/ investigation.

4. The petitioner shall not misuse their liberty in any manner.

5. The petitioners shall not jump over the bail.

6. The petitioners shall once again appear before the IO once in 15(fifteen) days and they shall continue to appear once a month till their personal appearance is dispensed with or charge sheet is submitted, whichever is earlier.

7. Along with the bail bond, the petitioners shall also submit an undertaking before the learned trial Court on all date without fail, further undertaking that in the event they cannot appear on any particular date they shall ensure that they are represented by their learned counsels and that they shall not dispute his identity or the identity of the witnesses examined while on representation.

8. If the petitioners are found violating any conditions mentioned above, it would be open to the learned trial Court to issue NBWA to secure presence of the petitioners during trial.

9. The Registry shall not issue certified/ uncertified copy of scanned copy of the case records.

10. Application stands disposed of.

JUDGE

Comparing Assistant