

GAHC010018862023



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

Case No. : AB/275/2023

HAYAT ALI AND ANR
S/O KUSUMUDDIN SHEIKH
R/O VILL- MAJERCHAR, P.O. MAJERCHAR
P.S. DHUBRI, DIST. DHUBRI, ASSAM
PIN-783325

2: MOYAN ALI SHEIKH
S/O KUSUMUDDIN SHEIKH
R/O VILL-MAJERCHAR

P.O. MAJERCHAR
P.S. DHUBRI

DIST. DHUBRI
ASSAM
PIN-78332

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MD. S ALOM

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 03-04-2023

Heard Mr. S. Alom, learned counsel for the petitioner 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] Hayat Ali and [2] Moyan Ali Sheikh have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Dhubri Police Station Case no. 58/2022, registered for offences punishable under Sections 143/313/302, Indian Penal Code [IPC] for the second occasion after rejection of their earlier pre-arrest bail application, A.B. no. 3602/2022 by an order dated 19.12.2022, after perusal of the materials in the case diary produced on that date by the learned Additional Public Prosecutor.

3. The previous pre-arrest bail application, A.B. no. 3602/2022 was preferred by 7 [seven] nos. of petitioners viz. [1] Joinuddin Sheikh, [2] Jahan Ali, [3] Fakir Chand Ali, [4] Asmot Ali, [5] Akkas Ali Sheikh, [6] Hayat Ali [the petitioner no. 1 herein] and [7] Moyan Ali Sheikh [the petitioner no. 2 herein] and the same was considered on 19.12.2022. It was submitted by the learned Additional Public Prosecutor on the basis of the materials in the case diary, received by him on that day, that there was complicity of these two petitioners in the alleged crime and there was no complicity of the other five petitioners in A.B. no. 3602/2022. This Court while allowing the prayers of pre-arrest bail in respect of the other five petitioners, accordingly rejected the prayers for pre-arrest bail in respect of these two petitioners.

4. The First Information Report [FIR] was lodged by the informant on 18.01.2022 alleging murder of his niece, whose marriage was solemnized with the accused no. 1 named in the FIR viz. Jahidul Islam. As per the FIR, the dead body of the deceased was found in a bamboo grove by the side of river Tipkai. On institution of the FIR, the accused no. 1 named in the FIR was arrested and thereafter, he was allowed to go on bail under Section 167[2], CrPC.

5. As per the post-mortem examination report, the death of the deceased was due to shock and hemorrhage as a result of injuries sustained by the deceased, which are homicidal in nature. The post-mortem examination report has also reported a number of injuries on the body of the deceased.

6. These two petitioners are the younger brothers of the husband of the deceased. It is submitted by the learned counsel for the petitioners that these two petitioners reside separately from the house of their brother, Jahidul Islam at a distance of about 1 Km and there was no involvement of the two petitioners in the homicidal death of their sister-in-law.

7. I have gone through the materials in the case diary produced by Mr. Parasar, learned Additional Public Prosecutor for the State. None of the witnesses save and except one, has implicated these two petitioners with the alleged homicidal death of the deceased. One witness had mentioned the petitioners' names on the basis of hearsay, without any further material connecting these two petitioners to the alleged death of the deceased. There is no material in the case diary, produced today, indicating that these two petitioners used to reside in the same house with their elder brother, that is, the husband of the deceased. There is no sufficient material collected during the course of investigation carried out so far, wherefrom it can be inferred that these two petitioners were also instrumental in causing or had some role in the

death of the deceased.

8. Having regard to such available materials in the case diary, this Court is of the considered view that the two petitioners have made out a case for extending the benefit of pre-arrest bail under Section 438, CrPC to them. This Court is of the considered view that custodial interrogation of the petitioners for the purpose of carrying out further investigation of the case is not necessary and their release on pre-arrest bail, at this stage of investigation, is not unlikely to bring any adverse effect in the further investigation of the case, provided the petitioners extend their assistance and co-operation in the further investigation of the case.

9. Accordingly, it is provided that in the event of arrest of the petitioners in connection with Dhubri Police Station Case no. 58/2022, they shall be released on bail on furnishing a bail bond of Rs. 50,000/- each with one local surety each of the like amount to the satisfaction of the arresting authority, subject to the conditions that :

[i] The petitioners shall appear before the Investigating Officer [I.O.] of the case within 7 [seven] days from today and shall co-operate with the investigation and shall thereafter, make themselves available for interrogation whenever required by the I.O. of the case;

[ii] The petitioners shall not, directly or indirectly, make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer; and

[iii] The petitioners shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected

by the police.

[iv] The petitioners shall not leave the territorial jurisdiction of the aforesaid police station, without prior written permission from its officer in charge;

[v] The petitioners shall maintain law and order and they shall not commit an offence similar to the offence of which they are accused, or of the commission of which they are suspected; and

[vi] The petitioners shall regularly remain present during the trial and cooperate the Court to complete the trial for the above offences, if charge sheeted in the case.

10. The bail application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant