

GAHC010019442023



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

Case No. : AB/279/2023

SHER MAHAMMAD AND 3 ORS
S/O BOHOL SHEK
R/O VILL- BARBALUPARA
P.S.MATIA
DIST. GOALPARA, ASSAM

2: SAMSUL HAQUE
S/O BAHOL SHEK
R/O VILL- BARBALUPARA
P.S.MATIA
DIST. GOALPARA
ASSAM

3: KHABIBAR RAHMAN
S/O SHIRAJUL HAQUE
R/O VILL- BARBALUPARA
P.S.MATIA
DIST. GOALPARA
ASSAM

4: MAJIR UDDIN
S/O MIL SHEIK
R/O VILL- BARBALUPARA
P.S.MATIA
DIST. GOALPARA
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. T J MAHANTA
Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

16.02.2023

Heard Mr. N. J. Dutta, learned counsel for the petitioner, Mr. S. H. Rahman, learned counsel for the informant 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] Sher Mahammad, [2] Samsul Haque [3] Khabibar Rahman; and [4] Majir Uddin have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Matia Police Station Case no. 144/2022, registered for the offences punishable under Sections 147/148/149/341/326 /307, Indian Penal Code [IPC].

3. Mr. N. J. Dutta, learned counsel for the petitioner has submitted that the petitioner no. 1 is a person aged about 72 years whereas the petitioner no. 2 is a person aged about 65 years, suffering from various illnesses. He has submitted that prior to the alleged incident, the informant's husband viz Mazibar Rahman had convened a village meeting in the house of one Bazer Ali, Village - Barbalupara near his house with a view to settle a land dispute amicably between the accused No.1 and the accused no. 2 named in the FIR viz [Kitab Uddin Shekh and Kabibar Rahman]. The discussion which took place in the village, however, had failed and the same led to the alleged incident between the informant's side on one hand and the accused no. 1 and accused no. 5, named in the FIR viz Kitap Uddin Shekh and Samidul Shekh, on the other hand.

4. Learned Additional Public Prosecutor has produced the case diary

today.

5. As has been recorded earlier in the order dated 17.01.2023, as per the injury report available in the case diary, Md. Mazibar Rahman had sustained fracture in his right mandible and a head injury. As per the injury report, the injuries were grievous in nature and the same were caused by sharp object. The injury report of M/s Dispur Hospital Pvt. Ltd. has suggested neurosurgery.

6. While considering the previous bail application of the accused petitioners, AB No. 3753/2022, the materials available in that case diary, produced on that day, were perused. At that point of time, two of the accused persons named in the FIR viz [1] Kitab Uddin Shekh; and [2] Samsul Haque; were arrested. In the case diary, their statements recorded under 161 Cr.P.C. were available. In the case diary, the statement of the injured Md. Mazibar Rahman was also found available. The Court after perusal of the statements of [i] Kitab Uddin Shekh; [ii] Samsul Haque; and [iii] Mazibar Rahman had observed that the two arrested accused persons as well as the victim had implicated the present four petitioners, who are also named in the FIR, for assaulting the victim. When the case diary of Matia Police Station Case No. 144/2022 has been produced once again, the statements of [i] Kitab Uddin Shekh; [ii] Samidul Sheikh; and [iii] Mazibar Rahman have been perused once again. This Court has not found any variance in their statements as have been recorded earlier in the order dated 17.01.2023.

7. As regards village meeting is concerned, it is found from the case diary produced today that a number of witnesses have mentioned about village meeting which preceded the alleged incident. A number of witnesses whose statements are recorded under Section 161 Cr.P.C., have mentioned that in the village meeting these petitioners have extended threats to the injured with dire consequences.

8. The Hon'ble Supreme Court of India in Criminal Appeal No.938/2022 I [*Indresh Kumar vs the State of Uttar Pradesh & Anr.*], decided on 12.07.2022, has observed that while considering the bail application, incriminating statements of witnesses recorded under Section 164 Cr. P.C. and Section 161 Cr.P.C. The Hon'ble Supreme Court of India has observed the statements under Section 161 Cr.P.C. may not be admissible in evidence but are relevant in considering the prima facie case against the accused in application for grant of bail.

9. 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 17.01.2023 passed in AB no. 3753/2022.

10. Having considered the incriminating materials available in the case diary, which have been perused once again in considering the instant pre-arrest bail application, preferred for the second time, this Court does not find any good and sufficient reason for reconsideration of the earlier order dated 17.01.2023 passed in the previous bail application in AB no. 3753/2022. Consequently, the instant bail application is rejected.

11. The case diary be returned.

JUDGE

Comparing Assistant