

GAHC010021322023



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

Case No. : AB/347/2023

MD. ZAKIR HOSSAIN
S/O- HAJI HOBIBOR HOQUE @ HOBIBOR RAHMAN, VILL.- PATAKATA, P.S.
SOUTH SALMARA, DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

28.06.2023

Heard Mr. N. Uddin, learned counsel appearing for the petitioner. Also heard Mr. B.B. Gogoi, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

This second petition under Section 438 Cr.P.C., is filed for granting the

privilege of pre-arrest bail to the petitioner, namely **Md. Zakir Hossain** apprehending arrest in connection with **South Salmara P.S. Case No.77/2014** registered u/s **120B/147/148/149/ 326/ 302** of the IPC.

The earlier pre-arrest bail application of the petitioner being AB No.2224/2021 was rejected by this Court vide order, dated 23.09.2021.

The Case diary of South Salmara P.S. Case No.77/2014 along with the case records of Sessions Case No. 5/2022 of the learned court of Sessions Judge, Dhubri, as called for, is placed before the Court.

The prosecution story, in brief, is that on 05.05.2014, at about 1.30 p.m, the informant's sons namely, Sohikul Islam(Ranju), Abul Kalam and Rohit Miah went to Patakata Market for taking back the money which was due from the F.I.R. named accused No.1. On reaching there, the F.I.R. named accused No. 1 asked the informant's sons to come to his house for taking the money and accordingly they went there. Then, the accused No. 1 along with the other co-accused persons made a conspiracy and forcefully tied them up and assaulted with rod, dao, dagger etc. On being informed by the local people, the police arrived at the place of occurrence and rescued the victims in serious conditions and took them to South Salmara PHC for treatment, but Abul Kalam was declared dead by the doctor and other two victims were referred to Dhubri Civil Hospital for better treatment. On the way to Dhubri Civil Hospital, Sohikul Islam (Ranju) also succumbed to his injuries and Rohit Miah was admitted in Dhubri Civil Hospital.

Mr. N. Uddin, learned counsel appearing for the petitioner, submits that the petitioner has been roped into a false and fabricated case. According to Mr. Uddin, the deceased Sohikul Islam, Abul Kalam Azad and the injured Rohit Miya were dacoits and they were involved in various crimes like extortion, murder,

dacoity etc. in the locality. According to Mr. Uddin, on 05.05.2014, all the said persons being armed with pistols came and demanded money from the F.I.R. named accused Abdul Aziz and on his refusal to pay the demanded money, Sohikul Islam tried to kill Abdul Aziz pointing a pistol to his head. Having seen the incident accused Abdul Mozid and Rahmatulla jumped to Sohikul Islam and somehow managed to snatch the pistol from his hand. Hearing the aforesaid incident the villagers rushed to the place of occurrence and after interrogation another pistol was recovered from the possession said Rohit Miya and both the pistols were handed over to the VDP Secretary. The VDP Secretary, in turn, informed the police about the incident, but, before arrival of the police, there was a public mob of more than 200 people, who assaulted the said dacoits and injured. According to Mr. Uddin, in the meantime, the police party arrived on the spot and shifted the injured dacoits to the hospital for treatment. But, on the way, two of the three dacoits died. Mr. Uddin further submits that in connection with the aforesaid incident one Julhash Ali lodged an FIR, whereupon South Salmara P.S. Case No. 75/2014 under Sections 307/511/34 of the IPC read with Section 25(1-A) of the Arms Act was registered and after completion of investigation, the police laid a charge-sheet under Section 307 of IPC read with Section 25(1-A) of the Arms Act against the surviving dacoit, namely Rohit Miya, which is pending trial in the Court of learned Sessions Judge, Dhubri. However, Mr. Uddin submits, suppressing all these material facts one Mohizol Haque has filed the present FIR depicting a false story against the petitioner and 11 others.

Mr. B.B. Gogoi, learned Addl. Public Prosecutor, submits that perusal of the case diary shows prima facie incriminating material against the petitioner.

A perusal of the case diary along with the statements recorded under Section 164 Cr.P.C., it is revealed that there is incriminating material against the

petitioner.

The post-mortem reports show that deceased Abul Kalam Azad and Shohidul Islam died of sustaining multiple injuries caused by blunt weapons. In the connected Sessions Case No. 05/2022 (corresponding to South Salmara P.S. Case No. 75/2014), it is noticed that charges under Sections 307 of the IPC read with Section 25(1-A) of the Arms Act were framed vide order, dated 22.02.2022 and thereafter, no P.W. is examined.

Having considered the above conflicting factual aspects of both the cases and as the present petitioner is absconding and despite the best efforts, the police have not been able to trace him out, this Court is of the opinion that it is not a fit case to grant the privilege of pre-arrest bail to the petitioner.

Accordingly, the pre-arrest bail application of the petitioner stands rejected.

Return the case diary.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant