

GAHC010040572023



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

Case No. : Bail Appln./684/2023

AJIJUL ISLAM AND 2 ORS
S/O. NASER ALI, R/O. KATHONIBARI, P/S AND P/O. THELAMARA, PIN NO.
784149, DISTRICT- SONITPUR, ASSAM

2: ABDUL ALI
S/O. ALIUDDIN
R/O. BORGHAT
P/S. TEZPUR
P/O. BORGHAT
PIN NO. 784026
DISTRICT- SONITPUR
ASSAM

3: MONSUR ALI
S/O. ABDUL SUBAN
R/O. KATHANIBARI
THELAMARA
P.O AND P.S THELAMARA
PIN NO. 784149
DISTRICT- SONITPUR
ASSAM

VERSUS

THE STATE OF ASSAM)
REPRESENTED BY PP, ASSAM

Advocate for the Petitioner : MR. M RAHMAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

15.03.2023

Heard Mr. M. Rahman, learned counsel for the accused-petitioners and Mr. B.B. Gogoi, learned Addl. Public Prosecutor, Assam for the State.

2. This bail application has been filed by the accused-petitioners namely, **1. Ajijul Islam, 2. Abdul Ali, and 3 Monsur Ali**, seeking bail in connection with **North Lakhimpur P.S. Case No. 666/2023** under Sections 399/402/224/511 of the IPC read with Section 25 (1-A) of Arms Act

3. By an FIR dated 29.12.2022 lodged by the informant one Milton Borgohain, who is SI (UB) of North Lakhimpur Police Station. It was alleged that on 28.12.2022 on the basis of credible information, the informant along with other police party proceeded to Lakhimpur bypass in order to apprehend the accused persons as it is alleged that they were a gang of dacoits who were preparing to commit dacoity. A TATA Sumu vehicle bearing registration No. WB 58W 4828 in which they were travelling was searched and one 0.32 pistol loaded with four (4) rounds of ammunitions was recovered which was hidden inside the cover of the steering shaft (beneath the dashboard). The vehicle and the arms along with ammunitions were seized from the accused persons namely, Md. Ibrahim Ali, Md. Atikul Islam, Ajijul Islam, Md. Abdul Ali and Md. Monsur Ali. It is further alleged that while the seizure list was being prepared, one of the accused person namely, Md. Ibrahim Ali, attempted to snatch away a seized pistol and tried to run away from police custody. It is alleged that the

said accused person pointed the pistol on the police party and was fleeing away. Finding no alternative, the informant fired four rounds of controlled fire with his service pistol pointing towards the leg of the accused-person and as a result of which the said accused person sustained injury on his leg and the police managed to apprehend him. The injured accused person was immediately shifted to Lakhimpur Medical College and Hospital under proper guard for treatment. Upon interrogation of the other accused persons, it was disclosed that they had planned to commit dacoity in the Boginodi P.S. area with the help of another co-accused of Boginodi P.S. area. The FIR lodged was received and registered as North Lakhimpur P.S. Case No. 666/2022 under Sections 399/402/224/511 of the IPC read with Section 25(1-A) of the Arms Act.

4. The accused persons were forwarded to the Judicial Magistrate, North Lakhimpur and thereafter, have continued to be in custody. The police initiated investigations in the matter. The accused petitioner No. 2 had also preferred a bail petition before the Chief Judicial Magistrate, North Lakhimpur which was rejected vide order dated 19.01.2023. It is the submission of the learned counsel for the petitioner that the accused-petitioners have been falsely accused of attempting to commit any dacoity. The recovery of arms and ammunitions are denied by the accused-petitioners and it is submitted that they had been falsely accused in the said case as one of the accused-person was filming in his mobile phone regarding the harassment caused by the police to the other accused-petitioners. When the police realized that one of the accused-person was capturing the whole episode on his mobile phone, they wanted to snatch away the mobile phone which the concerned accused-petitioner refused to hand over and in turn smashed the phone after uploading the video on the social media.

Thereafter, the police informed the higher authority about the mobile video uploaded and the said person namely, Ibrahim Ali was fired upon by the police party causing grievous injury on his leg.

5. The matter was listed on 28.02.2023 on which date at the prayer of the learned counsel for the accused-petitioners, the matter was deferred to 15.03.2023. Today when the matter is called up, the learned Addl. Public Prosecutor submits that the case diary is available and the same has been produced before the Court.

6. The learned counsel for the accused-petitioners has referred to a Judgment of the High Court of Madhya Pradesh rendered in the case of Rajendra @ Raja and Ors. Vs. The State of Madhya Pradesh & Ors in Criminal Appeal No. 1243/2009. The learned counsel for the accused-petitioners submits that the High Court of Madhya Pradesh in a similar matter has held that a mere fact that the accused persons were arrested on the spot and some articles including fire arms were recovered from the possession would not be sufficient to prove the charge that they had assembled for making preparation of commission of dacoity.

7. The learned counsels for the parties have been heard. The bail application has been perused. The case diary presented has also been perused.

8. It is seen that from the case diary the accused-petitioners were arrested on 29.12.2022 and they were forwarded on 30.12.2022 to judicial custody and since then they have been in custody. It is also seen from the case diary that

the arms and ammunitions which were seized have been sent for forensic reports. However, the reports have not yet been received by the police. From the case diary, it is seen that the police is proceeding with the investigation, however, no charge-sheet has yet been filed.

9 The Judgment referred to by the learned counsel for the accused-petitioners rendered by the High Court of Madhya Pradesh has also been carefully perused. The Judgment of the High Court of Madhya Pradesh relied upon a Judgment of High Court of Patna rendered in Shridhar Koeri vs. State of Bihar as well as a Judgment of the High Court of Orissa rendered in Jaganath Mundari Vs. State of Odisha.

10. After due perusal of the Judgment, it is seen that the Judgment rendered by the High Court of Madhya Pradesh as well as Judgments rendered in High Court of Patna and the High Court of Orissa have been rendered in criminal appeals. All these three Judgments have referred to a Judgment of the Apex Court rendered in *Chaturi Yadav and Ors. Vs. State of Bihar* reported in *AIR 1979 SC 1412*.

11. A perusal of the said Judgment rendered by the Apex Court reveals that the same is directed against the Judgment of the High Court of Patna confirming the conviction and sentence passed by the trial Court. In the said Judgment, the Apex Court held that mere fact that the appellant therein had assembled and were found to be in possession of arms and ammunitions, and the mere fact that these persons were found at 1.00 AM does not by itself proof that the appellants had assembled for the purpose of committing dacoity or for

making preparations to accomplish that object. Such findings of the Apex Court was rendered in view of the finding of the Patna High Court (out of which the Crl. Appeal before the Apex Court arose) itself that on the facts of that case, the Patna High Court found it difficult to believe that the appellants would assemble in such a conspicuous place with the intention of committing a dacoity and would take such a grave risk that the proposed place of occurrence was a school premises which is located very close to a market area. It is in that context that the Apex Court allowed the SLP and dismissed the appeal before the Patna High Court and acquitted the appellant therein of the charges framed against them.

12. Since the matter is under investigation and the police has not yet filed the charge-sheet. At this stage, it is not possible to come to a prima facie finding that there are no other materials available against the accused-petitioners save and except the recovery of arms and ammunitions from them to implicate them in the case that they were planning to commit dacoity. Such conclusion can be arrived at only after filing of the charge-sheet depending on what charges are brought against the accused-petitioners.

13. In the facts of the present case, the offences alleged are all grave and the punishments prescribed are severe. There are materials on the case diary to suggest that the investigation is in progress and the Investigating Officer is awaiting reports from the forensic laboratory in respect of the arms and ammunitions which have been sent for examination. The statements of some of the witnesses implicate the accused-petitioners including the recovery of the arms and ammunitions concealed in the vehicle in which they were travelling. There are materials in the case diary to suggest that release of the accused-

petitioners on bail at this stage will not be conducive for the investigation which is being carried out. The prayer for bail at this stage is rejected.

14. Accordingly, the bail petition stands rejected.

15. Return the case diary.

16. The investigating Officer, however, is directed to complete the investigation expeditiously and carried to its logical conclusions.

JUDGE

Comparing Assistant