

GAHC010040902023



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

Case No. : AB/618/2023

EKRAMUL HOQUE AND 3 ORS
S/O MARAFAT ALI @ MARFAT ALI, R/O VILL-KHAKJANI, P.S.-
KHARUPETIA, DIST-DARRANG, ASSAM

2: MOKLES ALI
S/O MARAFAT ALI @ MARFAT ALI
R/O VILL-KHAKJANI
P.S.-KHARUPETIA
DIST-DARRANG
ASSAM

3: RAFIQUUL ISLAM @ RAFIKUL ISLAM
S/O MARAFAT ALI @ MARFAT ALI
R/O VILL-KHAKJANI
P.S.-KHARUPETIA
DIST-DARRANG
ASSAM

4: MARAFAT ALI @ MARFAT ALI
S/O LATE JABBAR ALI
R/O VILL-KHAKJANI
P.S.-KHARUPETIA
DIST-DARRANG
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 13-03-2023

Heard Mr. HRA Choudhury, learned senior counsel assisted by Mr. N Uddin, learned counsel for the petitioners. Also heard Ms. SH Bora, learned Addl. PP, appearing for the State respondent.

2. The petitioners, namely, 1. Ekramul Hoque, 2. Mokles Ali, 3. Rafiqul Islam @ Rafikul Islam and 4. Marafat Ali @ Marfat Ali, have filed this application under section 438 Cr.P.C., with a prayer for pre arrest bail in connection with Kharupetia PS Case No.358/2022 under sections 366/307/420/306/34 IPC.

3. I have given my anxious consideration to the submissions at the bar and I have also perused the case diary.

4. The FIR unfolds that the deceased had a love relationship with the petitioner No.1 and he took her away to his house. After the deceased reached his house, the other petitioners tried to set her ablaze by dousing her with kerosene. Then the deceased raised alarm and the petitioners assaulted her. The neighbours rescued the deceased and the public handed over the deceased to her parents. The deceased was 17 months short of 18 years and so the public assured to solemnize her marriage with the petitioner No.1 after the deceased would attain majority. The parents of the petitioner No.1 accepted the solution. When the deceased was about to complete 18

years, the petitioner No.1 at the behest of his family members refused to marry the deceased and he suggested that the deceased could consume poison. The deceased then sank into depression and she committed suicide.

5. It is submitted on behalf of the petitioners that they are in no way involved with the death of the deceased. No offence under section 306 IPC could be made out through the FIR. The petitioners have also relied on the decision of the Hon'ble Supreme Court in ***Kashibai & Ors Vs. the State of Karnataka*** in **(2023) LiveLaw SC 149**, wherein it has been held as follows:

“44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

6. It has also been submitted on behalf of the petitioners that the petitioner No.1 is a 19 years old lad and it was not fathomable for him that the victim would take such a step on his refusal to marry her. It is also submitted on behalf of the petitioner No.4 that he is the father of the petitioner No.1 who is 65 years old.

7. The learned Addl. PP has submitted that the statements of the

witnesses and the suicide note of the victim clearly incriminates the petitioners.

8. I have perused the case diary.

9. Admittedly the petitioner No.1 was engaged to the victim. They have denied that their conduct can be considered as abetment to commit suicide. There is no direct allegation that they have abetted the victim to commit suicide.

10. I have perused the case diary and the statement of witnesses under section 161 Cr.P.C.

11. The nitty gritty of the evidence is filtered at this juncture. This Court is not seized of the matter like deciding an appeal to take into consideration the ingredients required to prove under section 306 IPC. No prima facie case, admitting the petitioner to bail has been made out.

12. It cannot be ruled out at this juncture that no overt act could be attributed to the petitioners. A provision under section 438 Cr.P.C., cannot be exercised in an untrammelled manner.

13. The petitioners are booked under a grave offence. It appears that investigation may be adversely affected if the petitioners are insulated by an order of bail under section 438 Cr.P.C.

14. In view of my foregoing discussions, it is held that there appears to be no justified ground to extend the privilege of pre arrest bail to the petitioners at this stage of investigation. Petition is accordingly rejected. Send back the case diary.

JUDGE

Comparing Assistant