

GAHC010054412023



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

Case No. : AB/939/2023

KURBAN ALI @ KURPAN ALI AND 12 ORS
S/O LT. SONAULLAH
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO
DIST. KAMRUP (R)
ASSAM

2: FOTIK ALI @ FATIK ALI
S/O LT. SONAULLAH
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO
DIST. KAMRUP (R)
ASSAM

3: MORTOBANU @ MARTUBANU NESSA @ MARTABAN NESSA
W/O KURBAN ALI
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO
DIST. KAMRUP (R)
ASSAM

4: KHUDUSHA BEGUM @ KHUDEJA
W/O FATIK ALI
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO
DIST. KAMRUP (R)
ASSAM

5: RAHIMA KHATUN
W/O FATIK ALI
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO
DIST. KAMRUP (R)
ASSAM

6: ABIRAN BEGUM @ ABIRAN NESSA
W/O MD. HELAJUDDIN
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO
DIST. KAMRUP (R)
ASSAM

7: SUKURJAN NESSA @ SHUKURJAN NESSA
W/O MD. FAJAR ALI
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO
DIST. KAMRUP (R)
ASSAM

8: RUPBANU BEGUM @ RUPBHANU
W/O TAHAJUDDIN
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO
DIST. KAMRUP (R)
ASSAM

9: JAHURA @ JAHURA KHATUN
W/O SAFIKUL ISLAM
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO
DIST. KAMRUP (R)
ASSAM

10: ELIZA KHATUN @ ELISHA KHATUN
W/O MD. MAHIDULISLAM
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO
DIST. KAMRUP (R)
ASSAM

11: ABEDA KHATUN @ ABIDA KHATUN
W/O RAFIKUL ISLAM
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO
DIST. KAMRUP (R)
ASSAM

12: NURJAHAN KHATUN @ NOORJAHAN NESSA
W/O HABIBAR RAHMAN
W/O FATIK ALI
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO

DIST. KAMRUP (R)
ASSAM

13: ASMA KHATUN @ ASHMA
W/O RABIUL ALI
R/O VILL-KISMAT KATHMI P.O. DEKASANG
P.S. BOKO
DIST. KAMRUP (R)
ASSAM
VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. S MUNIR
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

27-06-2023

Heard Mr. S. Munir, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the State.

By this application under Section 438 CrPC, the petitioner, namely, **1) Kurban Ali @ Kurpan Ali, 2) Fotik Ali @ Fatik Ali, 3) Mortobanu @ Martubanu Nessa @ Martaban Nessa, 4) Khudusha Begum @ Khudeja 5) Rahima Khatun, 6) Abiran Begum @ Abiran Nessa, 7) Sukurjan Nesa @ Shukurjan Nessa, 8) Rupbanu Begum @ Rupbhanu, 9) Jahura @ Jahura Khatun, 10) Eliza Khatun @ Elisha Khatun, 11) Abeda Khatun @ Abida Khatun, 12) Nurjahan Khatun @ Noorjahan Nessa and 13) Asma Khatun @ Ashma** apprehending their arrest are seeking pre-arrest bail in **Boko P.S. Case No. 262/2022** registered under Sections 147/148/149/325/326/307/447/302 IPC corresponding to G. R. No. 305(K)/2022.

As per the FIR of the case lodged by the complainant on 09.06.2022 a land dispute between the side of the complainant and that of the accused persons petitioners herein was going on since last few days and the accused persons used to encroach upon the landed property of the complainant by using force, threat and violence even threatening to kill them. Complainant stated that on the strength of an injunction order vide Misc. (J) 115/2022 in T.S. 138/2022 and obtaining orders from the Amingaon Civil Court as well as in one petition No. 143 dated 27.05.2022 under Section 107 CrPC, his father and family members were cultivating the said land.

On 09.06.2023 around 06:30 am when his father and uncle went to the jute field for cultivation to work then the complainant and his family members were attacked with knife, dao, stick (lathi), rods in which his father Ali Akbar was killed at the spot on being beaten by the accused persons on his head and various parts of his body. In spite of calling 108 Ambulance and immediately taking him to Sontoli Primary Health Centre, the condition of his father became critical and he was referred to Gauhati Medical College and Hospital for better treatment and that his mother Rahima Khatun, brother Rabbul Ali, uncle Noor Muhammad @ Kalu, Norjamal Hoque, Nurul Hoque, aunt Banesa Khatun and Parbina Khatun are in critical condition undergoing treatment at GMCH. The same was registered as **Boko P.S. Case No. 262/2022** under Sections 147/148/149/325/326/307/447/302 IPC corresponding to G. R. No. 305(K)/2022.

Contention of the petitioners is that the investigating authorities have submitted a part charge-sheet No. 279/2022 dated 30.08.2022 received by the Court of learned Judicial Magistrate, First Class, Boko and that altogether 27 numbers of accused persons were named in the FIR, out of which only 8 accused persons were arrested and those arrested charge-sheeted persons are on bail and that the petitioners are working as cultivators/labourers in the said disputed land and are no way connected with the case.

Record reveals that there was a group clash took place on the date of incident between the side of the complainant and the side of the accused persons initiated from a land dispute, in which altogether three persons, two from the petitioners side and one from the side of the complainant succumbed to the injuries sustained during such fight.

By order dated 19.04.2023, considering the age of the petitioner Nos. 1 to 6, the Court granted interim bail to the petitioners Nos. 1) Kurban Ali @ Kurpan Ali, 2) Fotik Ali @ Fatik Ali, 3) Mortobanu @ Martubanu Nessa @ Martaban Nesa, 4) Khudusha Begum @ Khudeja 5) Rahima Khatun, 6) Abiran Begum @ Abiran Nessa.

Case diary reveals that there was a group clash took place in the date of incident from the side of the complainant and the side of the accused persons initiated from a land dispute, in which three persons altogether, two from the petitioners and one from the side of the complainant expired sustaining injuries during such fight.

Police authorities have already submitted the charge-sheet and further investigation is still going on.

Considering the above, the Court is of the view that custodial interrogation of the petitioners are not warranted to investigate said **Boko P.S. Case No. 262/2022**. As such, this pre-arrest bail application of the petitioners is accepted.

The interim bail granted to the petitioner Nos. 1) Kurban Ali @ Kurpan Ali, 2) Fotik Ali @ Fatik Ali, 3) Mortobanu @ Martubanu Nessa @ Martaban Nesa, 4) Khudusha Begum @ Khudeja 5) Rahima Khatun, 6) Abiran Begum @ Abiran Nessa on 19.04.2023 in said **Boko P.S. Case No. 262/2022** is hereby made absolute on the terms and conditions specified in the said order dated 19.04.2023.

Further, it is provided that in the event of arrest of the petitioners, namely, **7) Sukurjan Nesa @ Shukurjan Nessa, 8) Rupbanu Begum @ Rupbhanu, 9) Jahura @ Jahura Khatun, 10) Eliza Khatun @ Elisha Khatun, 11) Abeda Khatun @ Abida Khatun, 12) Nurjahan Khatun @ Noorjahan Nessa** and **13) Asma Khatun @ Ashma** in said **Boko P.S. Case No. 262/2022**, they shall be released on bail on furnishing bail bond of Rs. 50,000/-, each, with two local sureties each of the like amount to the satisfaction of the arresting authority on conditions that the petitioners shall - **(i)** appear before the concerned Magistrate in said G.R. Case No.305(K)/2022 arising out of **Boko P.S. Case No. 262/2022** on or before **07.07.2023** and thereafter, as and when they are required and/or on the dates so fixed in said G.R. Case No. 305(K)/2022 and further before the Investigating Officer of the case for necessary investigation of the case; **(ii)** not leave the territorial jurisdiction of the Boko Police Station, without obtaining prior written permission from the concerned Investigating Officer of the case; **(ii)** shall not leave the territorial jurisdiction of the Boko police station, without obtaining prior written permission from the concerned Investigating Officer of the case; **(iii)** shall not hamper with the investigation, or tamper with the evidence of the case and **(iv)** shall not, directly or indirectly, make any inducement, threat or promise to the complainant, his family members and/or any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the

Court or to any police officer.

Further, the petitioners shall not indulge in similar offence or any criminal offences in future, failing which, the bail granted to them in said **Boko P.S. Case No. 262/2022** shall stand automatically vacated.

Any violation of the aforesaid terms and conditions as specified in the order dated 19.04.2023 as well as herein above, by the petitioners, named above, the pre arrest bail granted to them in the aforementioned **Boko P.S. Case No. 262/2022** shall stand automatically vacated.

With the above observation and directions, this pre-arrest bail application accordingly stands allowed to the extent above.

JUDGE

Comparing Assistant