

GAHC010054922023



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

Case No. : AB/920/2023

HAZRAT ALI AND 8 ORS
S/O- LATE LALCHAN MOLLAH, VILLAGE- BOYZERALGA PART-III, P.O.
NAYERALGA, P.S. BILASIPARA, DIST.- DHUBRI, (ASSAM), PIN- 783348

2: FAZAR ALI
S/O- LATE LALCHAN MOLLAH
VILLAGE- BOYZERALGA PART-III
P.O. NAYERALGA
P.S. BILASIPARA
DIST.- DHUBRI
(ASSAM)
PIN- 783348

3: KADER ALI @ ABDUL KADER
S/O- ABBAS ALI
VILLAGE- BOYZERALGA PART-III
P.O. NAYERALGA
P.S. BILASIPARA
DIST.- DHUBRI
(ASSAM)

4: OHIJUL HOQUE @ ROFIJUL HOQUE
S/O- HAJARAT ALI
VILLAGE- BOYZERALGA PART-III
P.O. NAYERALGA
P.S. BILASIPARA
DIST.- DHUBRI
(ASSAM)
PIN- 783348

5: ABDUL KADER
S/O- HAZRAT ALI
VILLAGE- BOYZERALGA PART-III
P.O. NAYERALGA

P.S. BILASIPARA
DIST.- DHUBRI
(ASSAM)
PIN- 783348

6: JOHIR UDDIN
S/O- MOJID ALI @ ABDUL MOJIT
VILLAGE- BOYZERALGA PART-III
P.O. NAYERALGA
P.S. BILASIPARA
DIST.- DHUBRI
(ASSAM)
PIN- 783348

7: MIZANUR RAHMAN @ NIDHAN ALI
S/O- LATE MOJID ALI @ ABDUL MOJIT
VILLAGE- BOYZERALGA PART-III
P.O. NAYERALGA
P.S. BILASIPARA
DIST.- DHUBRI
(ASSAM)
PIN- 783348

8: MONOWARA BIBI @ MONOWARA KHATUN
W/O- ATTAL SK @ AKTAR HOSSEN
VILLAGE- BOYZERALGA PART-III
P.O. NAYERALGA
P.S. BILASIPARA
DIST.- DHUBRI
(ASSAM)
PIN- 783348

9: SURATON BIBI
W/O- ABBAS ALI
VILLAGE- BOYZERALGA PART-III
P.O. NAYERALGA
P.S. BILASIPARA
DIST.- DHUBRI
(ASSAM)
PIN- 78334

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR K BHUYAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

10-05-2023

Heard Mr. K. Bhuyan, learned counsel for the petitioners and Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the respondent.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [Cr.PC], the petitioners, [1] Hazrat Ali, [2] Fazar Ali, [3] Kader Ali @ Abdul Kader, [4] Ohijul Hoque @ Rofijul Hoque, [5] Abdul Kader, [6] Johir Uddin, [7] Mizanur Rahman @ Nidhan Ali, [8] Monowara Bibi @ Monowara Khatun & [9] Suraton Bibi have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Bilasipara Police Station Case no. 107/2022 registered under Sections 143/326/427, Indian Penal Code [IPC], for the second occasion after rejection of their earlier bail application, AB no. 3159/2022 by an order dated 20.12.2022 after perusal of the materials available in the case diary, produced on that day by the learned Additional Public Prosecutor.

3. It is to be noted that the instant pre-arrest bail application is preferred for the second occasion by 9 [nine] numbers of petitioners. During the pendency of the instant bail application, the petitioner nos. 1, 2 & 7 were arrested and the learned counsel for the petitioners had submitted on 28.04.2023 that he would not be pressing the instant pre-arrest bail application in respect of the said three petitioners.

4. In the First Information Report [FIR] lodged in connection with Bilasipara Police Station Case no. 107/2022, the informant had named 17 [seventeen] persons as accused. The names of the 9 [nine] petitioners herein have figured amongst the 17 [seventeen] nos. of accused persons named in the FIR.

5. The allegations in the FIR are, *inter alia*, to the effect that at around 07-30 a.m. on 09.04.2022, the accused persons armed with sharp weapons and lathis got themselves involved in a quarrel with one Sattar Ali with regard to a landed property. Thereafter, they assaulted a number of persons named in the FIR. The informant has alleged that all of them had sustained serious injuries and as a result, the injured persons had to be admitted at Bilasipara Government Hospital at first and thereafter, they had to be taken to Kokrajhar Civil Hospital for better treatment. While the treatments of the injured persons were going on there, the accused persons had again destroyed the house of one Sahjahan Ali.

5. Mr. Bhuyan, learned counsel for the petitioners has submitted that the petitioners' side had also instituted an FIR through the petitioner no. 8 on 10.04.2022 and the said FIR was registered as Bilasipara Police Station Case No. 109/2022 under Sections 143/326/427 IPC. It is submitted by him that a number of persons from the petitioners' side had also sustained injuries in the incident in question, occurred on 09.04.2022. In view of such submissions made by the learned counsel for the petitioners, the case diaries of both Bilasipara Police Station Case no. 107/2022 and Bilasipara Police Station Case no. 109/2022 were called for.

6. Ms. B. Sarma, learned Additional Public Prosecution, Assam has submitted that upon completion of investigation in connection with Bilasipara Police Station Case no. 109/2022, the Investigating Officer of the case has already submitted a charge-sheet under Section 173 [2], Cr.PC vide Charge-Sheet no. 367/2022 dated 27.04.2023.

7. When the petitioners' previous pre-arrest bail application, AB no. 3159/2022 was considered, on the basis of the materials available in the case diary of Bilasipara Police Station Case no. 107/2022, this Court had found seven numbers of injury reports in respect of seven numbers of assaulted persons from the informant's side. This Court had found that out of 7 [seven] injured persons, 3 [three] of them had sustained grievous injuries by blunt/sharp objects and the other 4 [four] persons had sustained simple injuries by blunt/sharp weapons.

8. The concerned case diary has been produced today and having gone through the 7 [seven] numbers of injury reports, the Court reiterates its previous findings.

9. This Court on the earlier occasion had recorded that the witnesses whose statements were recorded under Section 161, CrPC, had specifically pointed out about the active participation of all the petitioners herein in the incident of assault that occurred on 09.04.2022. The learned counsel for the petitioners has made submission to the effect that the women accused persons were not involved in a incident of assault and as such, the benefit of pre-arrest bail should, at least, be extended to them. On perusal of the materials in the case diary produced today, it is found from the statements of the injured witnesses as well as from the eye- witnesses that the petitioner nos. 8 & 9 were involved in the incident of assault with sharp weapons in their hands. The other petitioners were also implicated with the witnesses stating that they were actively involved in assaulting the injured persons from the informant's side.

10. 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 petitioners do not appear to be of any substance for re-consideration of the earlier order dated 20.12.2022 passed in AB no.3159/2022. Having considered the incriminating materials available in the case diary, produced before this Court today by the learned Additional Public Prosecutor, this Court finds no good and sufficient reasons for re-consideration of the previous order dated 20.12.2022. Consequently, finding no merit in this second pre-arrest bail application, the same is rejected.

JUDGE

Comparing Assistant