

GAHC010063792023



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

Case No. : AB/1092/2023

JOYNAL ABEDIN @ LAL HOSEN AND 2 ORS
S/O- LATE JOMIR UDDIN, VILL- ADABARI PART-II, P.S. DHUBRI, DIST.-
DHUBRI, ASSAM, PIN- 783324

2: AYNAL HOQUE
S/O- LATE JOMIR UDDIN
VILL- ADABARI PART-II
P.S. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783324

3: ROMISH UDDIN SK. @ DHONI
S/O- LATE MANIR UDDIN SK.
VILL- BIDYAPARA
WARD NO. 8
P.S. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 78332

VERSUS

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

Advocate for the Petitioner : MR R ISLAM

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

09.05.2023

1. Heard Mr. R. Islam, learned counsel appearing for the petitioners as well as Mr. P. Borthakur, learned Addl. P.P. appearing for the State respondent.
2. The petitioners, namely, Joynal Abedin, Aynal Hoque, Romish Uddin Sk, have filed this application under Section 438 Cr.P.C with prayer for pre-arrest bail as they are apprehending arrest in connection with Dhubri P.S. Case No. 977/2019, under Sections 376(D)/395 IPC. Earlier their bail petition under Section 438 was rejected by this Court vide order dated 09.02.2023 in connection with A.B. No. 86/2022 as sufficient materials found in the case diary against the petitioner. The statement of the victim under Section 161 and 164 Cr.P.C also incriminates the petitioner.
3. I have considered the submissions at the Bar and I have also perused the case diary. This subsequent petition with prayer for anticipatory bail was filed on a new ground. It is submitted that the accused Bellal Hoque named in the Fir has passed away on 11.02.2016. The death certificate is appended as Annexure-5. It is clear from the allegation in the FIR that the Bellal Haque was also one of the accused who committed gang rape on the victim. It is submitted that as a dead person has been named in the FIR, it clearly reveals that the FIR is false and fabricated. The petitioner no. 1 on the other hand has filed an FIR dated 04.06.2019 against the brother of the victim. The petitioner's sister was married to the victim's brother and she was subjected to cruelty and when the petitioner No. 1 Joynal Abedin

learnt that his sister was subjected to cruelty, he lodged the FIR and his sister was forwarded for medical treatment and the discharge certificate marked as Annexure-3 reveals that the petitioner no. 1's sister was attended by the petitioner no. 1 during her stay in the Dhubri Civil Hospital from 05.06.2019 to 09.06.2019. The FIR was lodged against the brother of the victim of the instant case on 04.06.2019 and the present FIR has been fabricated and lodged on the following date i.e. on 05.06.2019. It is submitted that the accused Lal Hosen and Aynal Hoque are the brothers and the accused Dhoni and Abdul Hai are cousins and it is not possible that gang rape will be committed by brothers and cousins together and it is also not believable that a deceased was named as accused in the FIR.

4. After considering the submissions at the Bar and considering all aspects, petition is allowed.

5. In the event of their arrest, the petitioners shall be enlarged on bail of Rs. 50,000/- each with a suitable surety each of like amount to the satisfaction of the arresting authority,

under conditions that,

- (i) the petitioners will appear before the I/O within 10(ten) days and co-operate with the investigation.
- (ii) the petitioners will not exercise threats to the victim as well as the witnesses.
- (iii) the petitioners will not hamper with the investigation, or tamper with the evidence of the case;
- (iv) the petitioners will not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

Send back the case diary.

JUDGE

Comparing Assistant