

GAHC010068442023



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

**Case No. : Bail Appln./1213/2023**

ROBIYAL ALI AND ANR.

S/O- SAHED ALI, VILL.- PALHAJI, P.S. AND DIST. BARPETA, ASSAM, PIN- 781309.

2: RAFIKUL ISLAM  
S/O- ABDUL HUSSAIN  
R/O- VILL.- BATUA  
P.S. PATACHARKUCHI  
DIST. BARPETA  
ASSAM  
PIN- 781318

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

**Advocate for the Petitioner : MR. P THAKURIA**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**06-06-2023**

Heard Mr. P. Thakuria, learned counsel for the petitioners. Also heard Mr.

B.B. Gogoi, learned Additional Public Prosecutor, Assam.

2. The bail application has been preferred by the petitioners, namely, Robiyal Ali and Rafikul Islam seeking bail in connection with Sessions Case No. 209/2022 arising out of Barpeta P.S. Case No.338/2022 under Sections 120(B)/341/302/34 of IPC, which is pending before the District and Sessions Judge, Barpeta.

3. The learned counsel for the petitioners submits that the petitioners were arrested in connection with an FIR dated 22.03.2022 lodged by the informant, one Harun Ali. The said FIR was received and registered as Barpeta Police Station Case No.338/2022 under Sections 341/302/34 of IPC.

4. In the FIR it was alleged that there was some land dispute between the sister of the informant and the accused persons mentioned in the FIR, which is still pending before the Court. During the pendency of the land dispute, on 21.03.2022 at about 7.30 p.m at Bilartari Chowk in the Barpeta District, the sister of the informant while coming out from the house of one Dr. Binay after checkup was killed by the accused persons No.1 and 2 named in the FIR. It is alleged that both the accused persons stabbed the deceased on her stomach and killed her. Thereafter, the accused persons No.1 and 2 had fled away from the place of occurrence on the Motor cycle driven by the accused No.3. Another sister of the informant, namely, Rupjan Nessa recognized the accused persons and is a witness of the incident.

5. Pursuant to the FIR being lodged, the petitioner was also arrested in connection with the said case. He was arrested on 30.03.2022 and since then he has been in custody.

6. Learned counsel for the petitioner submits that at present the trial has commenced before the Sessions Court, Barpeta and as many as 7 (seven)

prosecution witnesses have already been examined and till now not a single witness has implicated the petitioner.

7. This Court by earlier orders had called for the scanned copies of the LCR and the same are available in Court today. The learned counsel for the petitioners has also furnished a certified copy of the deposition of prosecution witness, P.W.7, namely, Rupjan Nessa, who is considered to be the eye witness in the murder of the sister of the informant.

8. It is submitted that the said P.W.7 was present with the deceased at the time of occurrence and therefore, she is a vital witness. It is further submitted that one of the prime accused, Makdam Ali has in the meantime been released on bail by order dated 29.06.2022 passed by the Sessions Judge, Barpeta.

9. Mr. B.B. Gogoi, learned Additional Public Prosecutor appearing for the State of Assam submits that the trial is going on and till date the petitioner has not been incriminated by any of the witnesses, who are examined so far.

10. Learned counsels for the parties have been heard. The scanned copies of the LCR available have been carefully perused. The depositions of the witnesses examined have also been perused including the deposition of P.W.7, copy of which is furnished today by the learned counsel for the petitioners. As discussed above, P.W.7 was present at the time of incident with the deceased and therefore, is considered to be a vital witness of the case.

12. A careful perusal of the depositions including the deposition of P.W.7 reveals that there is no allegation in so far as the present petitioners are concerned. No incriminating materials are found against the present petitioners by any of the witnesses so far. The present petitioners were also not named as accuseds in the FIR initially. Even from the chargesheet the allegations against the petitioners are on the basis of statements made by the other accused.

13. Upon taking all circumstances into consideration and upon hearing the learned counsel for the parties, more particularly, the depositions rendered by the prosecution witnesses including the P.W.7, this Court is of the view that the prayer for bail of the petitioners at the stage can be granted.

14. Accordingly, upon giving my anxious thoughts to the submissions made and the materials available in the case diary, this Court is of the view that considering the period of detention undergone and in view of the absence of any specific materials against the petitioners from the seven witnesses examined, the prayer for bail of the petitioners can be granted. Accordingly, the bail petition is allowed. The petitioners are directed to be released on bail forthwith subject to executing a bail bond of Rs.30,000/- (Rupees thirty thousand) each with one local surety of like amount to the satisfaction of the Sessions Judge, Barpeta. The bail granted, however, is subject to the following conditions:-

- i) The petitioner shall continue to appear before the police and cooperate with the Investigating Officer as and when required, till completion of investigation.
- ii) The petitioners shall not change his residence or place of business, without prior written permission from the Court of Sessions Court, Barpeta.
- iii) That the petitioners shall not hamper or tamper with the investigation in any manner; and
- iv) That the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person/witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer in connection to this Police Station Case.

15. If any of the conditions are found to be violated by the petitioners, then the Investigating Officer shall be at liberty to seek cancellation of the bail granted to the accused petitioners.

16. With the above direction, the bail petition is allowed and disposed of.

17. Return the Case Dairy.

**JUDGE**

**Comparing Assistant**