

GAHC010071802023



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

Case No. : AB/1238/2023

FAKAR UDDIN @ FAKRUL AND 2 ORS
S/O HAZRAT ALI
R/O BHOKUAMARI
P.S. BARPETA
DIST. BARPETA, ASSAM

2: ABUL KALAM @ ABUL KALAM
S/O ANAR HUSSAIN
R/O BHOKUAMARI
P.S. BARPETA
DIST. BARPETA
ASSAM

3: KAZIMUDDIN @ KALU
S/O HAZRAT ALI
R/O BHOKUAMARI
P.S. BARPETA
DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

30.05.2023

Heard Mr. S. Rahman, learned counsel for the applicants and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with Barpeta P.S. Case No. 1206/2022, under Sections 120[B]/354[B]/325/379/341/506 of the IPC read with section 67 of the I.T. Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicants, namely, Fakar Uddin @ Fakrul; Abul Kalam @ Abul Kalam Azad; and Kazimuddin @ Kalu for grant of pre-arrest bail.

3. It to be noted here that the said case has been registered on the basis of an FIR lodged by Smti X [name withheld] on 14.12.2022. The allegation leveled in the FIR, by the informant as well as by the victim, is that on 10.12.2022, while she was preceding to the house of one Abul Hashem of Suhagpur, at about 4 pm, one Fakrul along with Abul Kalam, Sahil, Rana, Pashan, Abdus Samad and Shahidul Islam, hatched a conspiracy and snatched a sum of Rs. 20,000/- from her bag and in the house of Abul Kashem they made her naked and assaulted her and caused injuries on her person and also snatched away one gold chain, ring, mobile handset and taken her naked photograph and made the same viral.

4. Mr. Rahman, learned counsel for the applicant submits that this is the second anticipatory bail application and the first one being AB No. 120/2023, was dismissed by this court on 03.03.2023, after perusing the case

diary. Mr. Rahman further submits that this second application is being filed on the ground after dismissal of the first bail application he came to know about filing of another FIR in connection with the same occurrence by one Maidul Islam on 12.12.2022, upon which the Barpeta PS Case No. 1215/2022 has been registered and that there are material contradiction in the two FIR in respect of the occurrence and in fact the first informant of Barpeta PS Case No. 1206/2022 and the informant of Barpeta PS Case No. 1215/2022, were found in a compromising position in the house of Abul Kashem and thereafter, lot of hue and cry and altercation took place and thereafter, both of them have lodged different cases with the intention to harass the applicants. Mr. Rahman further submits that the investigation of the case has already been completed and though not stated in the petition this is another ground for approaching this court and that the applicants are ready to face trial, and therefore, it is contended to allow the petition.

5. On the other hand, Mr. P.S. Lahkar, learned Additional Public Prosecutor, has vehemently opposed the petition on the ground that the ground so assigned for filing this second anticipatory bail application is not at all tenable, as the same have already been considered by this court, while disposing of the earlier application, being AB No. 120/2023. Mr. Lahkar further submits that after completion of investigation charge sheet has been laid against the applicants and there are sufficient materials to show their complicity with the offence, and therefore, it is contended to dismiss the petition. Mr. Lahkar further submits that during investigation of Barpeta PS Case No. 1215/2022 and Barpeta PS Case No. 1206/2022, have been amalgamated as the both FIR relates to the same occurrence and one charge sheet has been submitted by the IO against the applicants and some other accused persons.

6. Having heard the submissions of learned Advocates of both sides, I have carefully perused the petition as well as the documents placed on the record and also perused the scanned copy of the case diary produced by Mr. Lahkar, learned Addl. P.P. and also perused the scanned copy of the charge sheet of Barpeta PS Case No. 1206/2022.

7. It appears that after completion of investigation the IO has already laid charge sheet against the applicants, under sections 120[B]/354[B]/323/341 of the IPC read with section 67 of the IT Act.

8. Having regards to the nature of accusation and the materials collected in support of the same and subsequent filing of the charge sheet against the applicants under sections 120[B]/354[B]/323/341 of the IPC read with section 67 of the IT Act and also in view of the fact that the grounds so assigned in this bail application have already been considered in the earlier anticipatory bail application No. 120/2023, this court is of the view that the same appears to be not fresh ground.

9. However, in view of the fact that the investigation of the case has already been completed and charge sheet has been laid and as such, there is no scope of hampering the investigation or tampering the witnesses, I am inclined to dispose of this anticipatory bail application by directing the applicants to appear before the learned court below on 07.06.2023, and to apply for regular bail and on such appearance of the applicants and on filing a petition for granting regular bail, the learned court below shall consider the same in accordance with law.

10. However, regards to the submissions of learned counsel for both the parties and the facts and circumstances discussed herein above, this court is

inclined to extend the interim protection to the applicants till their appearance before the learned court below on 07.06.2023.

11. Accordingly, it is provided that in the event of arrest of the applicants, in connection with Barpeta P.S. Case No. 1206/2022, under Sections 120[B]/354[B]/325/379/341/506 of the IPC read with section 67 of the I.T. Act, they shall be enlarged on pre-arrest bail on their executing a bond of Rs. 25,000/- (Rupees twenty-five thousand) each, with one surety of like amount to the satisfaction of the arresting authority.

12. The above privilege is, however, subject to the following conditions:

(i) that the applicants shall appear before the learned court below on 07.06.2023;

(ii) that the applicants shall not leave the jurisdiction of the learned CJM, Barpeta, without prior permission; and

(iii) that the applicants shall not make any attempt to influence and intimidate the witnesses.

13. In terms of above, this AB stands disposed of.

JUDGE

Comparing Assistant