

GAHC010073042023



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

Case No. : AB/1242/2023

MD. HABIBUR RAHMAN AND ANR
S/O LATE ABDUL KUDDUS
R/O VILL- BARPETA UNDER RUPAHIHAT P.S.,
IN THE DISTRICT OF NAGAON, ASSAM

2: MD. AZIZUR RAHMAN
S/O MD. HASMAT ALI
R/O VILL- BARPETA
UNDER RUPAHIHAT P.S.

IN THE DISTRICT OF NAGAON
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B M CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 25.04.2023

Heard Mr. B. M. Choudhury, learned Counsel appears for

the petitioners. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor appearing for the State of Assam.

(2) By this application under Section 438 of Cr. P.C., the petitioners, namely, Md. Habibur Rahman and Md. Azizur Rahman are seeking Anticipatory Bail apprehending arrest in connection with an FIR dated 20.01.2023, which is registered as Rupahihat Police Station case No. 33/2023, registered under Sections 120(B)/147/148/149/326/302 of IPC.

(3) It is submitted by the learned counsel for the petitioner that an FIR dated 20.01.2023 was lodged by the informant, one, Junu Begum, alleging that her husband, Sirajul Islam was assaulted by the group of persons including the petitioners and because of which he sustained grievous injuries. The husband of the informant was thereafter, taken to hospital for medical treatment, but he expired while undergoing treatment. Accordingly, the FIR was lodged naming about 11 persons including the petitioners as the accused persons responsible for assaulting and causing grievous hurt to the late husband of the informant leading to his death.

(4) The learned counsel for the petitioners submits that the petitioners before this Court are not at all connected with the offences alleged; they were merely present at the place of occurrence. The place of occurrence was a bazaar and the incident was took place about 6.00 p.m in the evening. The petitioners are the close relatives of one Basirul Islam, against

whom primary allegations are made by the informant. It is submitted that purely on suspicion the petitioners are being named in the FIR and as such they apprehending arrest and approached this Court praying for anticipatory bail.

(5) This Court vide earlier orders had call for case diary along with Post Mortem Report. The case diary along with the Post Mortem Report is presented before this Court today by the learned Additional Public Prosecutor.

(6) Learned Addl. P.P submits that the matter is at the stage of investigation and therefore at this stage grant of anticipatory bail may affect the progress of investigation and therefore, the bail prayer needs to be rejected.

(7) The learned counsels for the parties have been heard. The case diary along with the post mortem report as presented before this Court has been carefully perused.

(8) There are depositions of two witnesses recorded under Section 164 Cr.P.C. The statements of these witnesses recorded under Section 164 Cr.P.C along with the statements of other witnesses do not implicate the present petitioners at the stage of investigation. The witnesses specifically make allegations against one, Basirul Islam. The prime accused, Basirul Islam in his statement before the Police also does not incriminate the petitioners and stated that there was nobody with him when he assaulted the deceased.

(9) Upon perusal of the case dairy, this Court finds that there are no materials which are incriminating in respect of the accused/petitioners to suggest that grant of anticipatory bail at this stage as prayed for the accused/petitioners would hamper the investigation carried on by the police in respect of the FIR lodged by the informant. Accordingly, this Court is of the view that in the event of their arrest in connection with the Rupahihat Police Station case No. 33/2023, registered under Sections 120(B)/147/148/149/326/302 of IPC., the petitioners are released on a bail bond of Rs.30,000/- (Rupees thirty thousand) only each with two local sureties of like amount to the satisfaction of the Arresting Authority. The bail granted however, is subjected to the following conditions:-

1. That the petitioners shall appear before the Investigating Officer within 10(ten) days and co-operate in the investigation as and when required;
2. The petitioners shall not leave the territorial jurisdiction of the police station, without prior written permission from Officer-in-Charge, Rupahihat Police Station.
3. That the petitioners shall not hamper or tamper with the investigation in any manner; and
4. 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.

(10) If any of the conditions are found to be violated then the Investigating Officer shall be at liberty to seek cancellation of the bail granted to the petitioners.

(11) Anticipatory bail petition is accordingly disposed of.

(12) Return the Case Diary.

JUDGE

Comparing Assistant