

GAHC010076682023



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

Case No. : AB/1299/2023

MD. NURUL HOQUE @ BABUL ALI
S/O GARJAN ALI
R/O HALIGAON
P.S. PALASHBARI
DIST. KAMRUP (R), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S M MOLLAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 10-04-2023

Heard Mr. S.M. Mollah, learned counsel for the petitioner and Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Md. Nurul Hoque @ Babuli Ali has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Palashbari Police Station Case no. 324/2022 registered under Sections 143/147/148/326/325/302, Indian Penal Code [IPC] for the second occasion after rejection of his previous pre-arrest bail application, A.B. no.

2599/2022 by an order dated 21.12.2022, after perusal of the materials available in the case diary, produced on that date. The previous pre-arrest bail application had been preferred by the petitioner along with another petitioner viz. Md. Khurached Ali @ Khursed Ali.

3. As per the First Information Report [FIR], there was an incident of assault on Hamid Ali, Mansur Ali and their mother on 29.08.2022. The informant is the brother of Hamid Ali and Mansur Ali. In the FIR, the informant has arraigned a number of persons as accused who had allegedly, armed with deadly weapons like *dao*, knives, sticks, etc. assaulted the informant's two brothers and mother. After the assault, the injured persons were taken to the Gauhati Medical College and Hospital [GMCH] for treatment. The injured person, Mansur Ali succumbed to his injuries whereas the other injured person, Hamid Ali was admitted in the emergency ward.

4. When the previous pre-arrest bail application, A.B. no. 3599/2022 preferred by the petitioner along with Md. Khurached Ali @ Khursed Ali came up for consideration on 21.12.2022, this Court after hearing the learned counsel for the parties and on perusal of the materials available in the case diary, had observed as under :-

“5. In the case diary, the post-mortem examination [PME] report of the deceased, Mansur Ali and the injury report of the injured, Hamid Ali are available. As per the post-mortem examination [PME] report, the cause of death was due to hemorrhage and shock resulting from the injuries sustained over the body of the deceased. The injuries were ante-mortem in nature and were caused by pointed sharp cutting weapons. As per the injury report, the injuries sustained were penetrating stab injuries. The statements of witnesses recorded under Section 161, CrPC are also available in the case diary. From the statements of the witnesses, it has emerged that the witnesses have indicated the presence of the petitioner no. 2 along with the other assailants in the incident of assault, which resulted into death of Mansur Ali. The presence of the petitioner no. 1 at the place of occurrence is not affirmed by those witnesses in their statements. The mother of the informant, who was also assaulted, has not implicated the petitioner no. 1 as a person present along with the assailants in the said incident of assault.”

5. This Court on 21.12.2022 finding sufficient incriminating materials against the present petitioner rejected his prayer for pre-arrest bail while allowing the prayer for pre-arrest bail of the other petitioner viz. Md. Khurached Ali @ Khursed Ali.

6. Mr. Mollah, learned counsel for the petitioner by referring to the forwarding reports of 3 [three] other arrested accused persons viz. [i] Junuwara Begum, [ii] Akhter Hussain Ali, & [iii] Rajib Ali, dated 30.08.2022 dated 01.09.2022, & dated 27.10.2022, has submitted that the Investigating Officer while forwarding the said arrested accused persons, had strongly suspected about their involvement in the crime. It is his submission that the investigation of the case has progressed considerably in the meantime and the case of the petitioner requires re-consideration.

7. Mr. Goswami, learned Additional Public Prosecutor has submitted that the said 3 [three] arrested accused persons were forwarded to judicial custody much earlier to the date of consideration of the pre-arrest bail prayer of the petitioner i.e. on 21.12.2022.

8. 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.

9. This Court while considering the prayer for pre-arrest bail of the petitioner on 21.12.2022, found involvement of the petitioner along with other assailants in the incident of assault which resulted into death of one person, Mansur Ali as the presence of the petitioner at the place of occurrence has been established by a number of witnesses in their statements recorded under Section 161, CrPC. The grounds cited in this second application on behalf of the petitioner do not appear to be of any substance for re-consideration of the earlier order dated 21.12.2022 passed in A.B. no. 3599/2022. In such view of the matter, this Court has not found any good and sufficient reason to re-consider the prayer for pre-arrest bail of the petitioner. As the instant pre-arrest bail application of the petitioner preferred for the second

occasion, is found devoid of merit, the same is accordingly dismissed.

JUDGE

Comparing Assistant