

GAHC010090672023



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

Case No. : Bail Appln./1581/2023

ELIAS ALI AND ANR
S/O JAYNAL ABEDIN
VILL- JORDANGA PT. I,
UNDER P.S. MANKACHAR,
DIST. SOUTH SALMARA MANKACHAR, ASSAM
PIN-783135

2: AKHIRUL ISLAM
S/O CHAN MIAH
VILL- DAMALKUNA (FUTAMARI)
UNDER P.S. MANKACHAR

DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN-78313

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 30.05.2023

Heard Mr. A. Z. Ahmed, learned counsel appearing for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor appearing for the State of Assam.

2. The bail application has been preferred by the petitioners, namely, 1. Elias Ali and 2. Akhirul Islam are seeking bail in connection with Mankachar P.S. Case No. 142/2023 registered under Sections 120(B)/302 of IPC. The petitioners were arrested on 22.03.2023 and on 20.03.2023 respectively and since then they have been in custody.

3. The learned counsel for the petitioner submits that an FIR dated 17.03.2023 was lodged by the informant, one Jahangir Hussain, wherein it was alleged that on 16.03.2023 the brother of the informant, one Kapil Hoque went to the house of the accused person, who is his wife, named in the FIR, from his own house. It is alleged that the accused person namely, the wife of his brother in a pre-planned manner took him to the house of one, Korphul Bibi and along with others killed his brother and locked the house, keeping his brother inside the house. On getting information over telephone, the informant informed the Police and lodged the FIR and the dead body of his brother was recovered.

4. Pursuant thereto the petitioners have been arrested in connection with the aforesaid case. Since the date of arrest, which is 22.03.2023 and 20.03.2023 respectively, they have been in

custody since then.

5. This Court by earlier order had called for the case diary along with Post Mortem Report. And Mr. B. B. Gogoi, learned Addl. P.P has produced the case diary along with the Post Mortem Report before this Court as called for.

6. From the Post Mortem Report it is seen that there were multiple punctured wounds and ligature marks found on the dead body of the deceased. The viscera and other body parts were sent for chemical examination in the FSL, Kahilipara. However, the opinion regarding the cause of the death in the post mortem report is kept pending till the receipt of Toxicological Analysis Report from DSFL, Kahilipara.

7. Upon careful perusal of the case diary, it is seen that the statements of various witnesses have been recorded and the matter is still under investigation. However, no charge-sheet has been filed as yet.

8. From the case diary, it is seen that there are some materials which incriminates the petitioner No.2. The materials available in the case diary *prima-facie* are incriminating in so far as the petitioner No.2 is concerned in respect of the offences alleged. However, no such specific incriminating materials are seen in so far as the petitioner No.1 is concerned.

9. 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 specific materials against the petitioner No.1, the prayer for bail in so far as the petitioner No.1 is concerned can be granted. However, in so far as the prayer

for bail of the petitioner No.2 is concerned, in view of specific materials which incriminate the petitioner No.2, his prayer for bail cannot be granted at this stage.

10. Accordingly, the bail petition is partly allowed. The petitioner No.1 is directed to be released on bail forthwith subject to executing a bail bond of Rs.30,000/- (Rupees thirty thousand) only with one local surety of like amount to the satisfaction of the Chief Judicial Magistrate, South Salmara, Mankachar. The bail, granted however, subject to the following conditions:-

- i) The petitioner No.1 shall continue to appear before the police and cooperate with the Investigating Officer as and when required, till completion of investigation.
- ii) The petitioner No.1 shall not change his residence or place of business, without prior written permission from the Court of Chief Judicial Magistrate, South Salmara, Mankachar.
- iii) That the petitioner No.1 shall not hamper or tamper with the investigation in any manner; and
- iv) That the petitioner No.1 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.

11. If any of the conditions are found to be violated by the petitioner No.1, then the Investigating Officer shall be at liberty to

seek cancellation of the bail granted to the accused.

12. With the above direction, the bail petition is partly allowed for the petitioner No.1 and disposed of.

13. Return the Case Dairy.

JUDGE

Comparing Assistant