

GAHC010090992023



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

Case No. : AB/1580/2023

SAMSUL HAQUE AND ANR.
S/O LATE MUBASIL ALI
R/O VILL- GULALKANDI
P.S. RATABARI
DIST. KARIMGANJ, ASSAM

2: ASHRAFUL HAQUE
S/O LATE BADRUL HAQUE
R/O VILL- GULALKANDI
P.S. RATABARI
DIST.KARIMGANJ
ASSA

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 MANISH CHOUDHURY

ORDER

Date : 15-05-2023

Heard Mr. L.R. Mazumder, learned counsel for the petitioners and Mr. A.K.

Das, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioners viz. [1] Samsul Haque and [2] Ashraful Haque have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Ratabari Police Station Case no. 310/2022, registered for offences punishable under Sections 120[B]/302, Indian Penal Code [IPC] for the second occasion after rejection of their earlier pre-arrest bail application, A.B no. 3636/2022 by an order dated 21.12.2022, after perusal of the materials available in the case diary, produced on that day before the Court. The previous pre-arrest bail application, A.B. no. 3636/2022 was preferred by four petitioners viz. [1] Samsul Haque [the petitioner no. 1 herein], [2] Ashraful Haque [the petitioner no. 2 herein], [3] Babul Hussain @ Indrazul Haque and [4] Joynal Hoque @ Jaynal Haque.

3. During the pendency of the previous pre-arrest bail application, A.B. no. 3636/2022, Babul Hussain @ Indrazul Haque and Joynal Hoque @ Jaynal Haque were arrested and the previous pre-arrest bail application, A.B. no. 3636/2022 was considered for the present two petitioners.

4. Mr. Mazumder, learned counsel for the petitioners has submitted that another two accused persons viz. Hafsa Begum and Abdul Haque were arrested in connection with Ratabari Police Station Case no. 310/2022 and thereafter, released on bail on 10.02.2023 and 16.03.2023 respectively.

5. The instant pre-arrest bail application has been preferred contending that the present two petitioners were not present at the place of occurrence and there was no eye witness, who had seen the presence of the two petitioners. He has

submitted that these two petitioners have no nexus with the other accused persons.

6. The First Information Report [FIR] in connection with Ratabari Police Station Case no. 310/2022 was lodged on 14.11.2022, wherein the informant had alleged that her husband, Najir Uddin was assaulted at around 06-30 p.m. on 13.11.2022 by the 8 [eight] accused persons named in the FIR, along with 6/7 other persons. The name of the petitioner no. 1 and the petitioner no. 2 are amongst the accused persons named in the FIR.

7. When the case diary of Ratabari Police Station Case no. 310/2022 was produced before the Court on 21.12.2022, the materials in the said case diary were perused by this Court. On such perusal, it was found that as per the Post-Mortem Examination [PME] Report, the death of the deceased was due to injuries sustained on the head. The PME Report had further reported that all the injuries were ante-mortem in nature and were caused by blunt force impact. It has been opined in the PME Report that the death was homicidal in nature. The Court had further found that the witnesses in their statements, recorded under Section 161, CrPC, have implicated both the petitioners as the assailants, who had assaulted the deceased at the place of occurrence on 13.11.2022.

8. The materials in the case diary collected during the course of investigation till 21.12.2022 have belied the submissions of the learned counsel for the petitioners. The materials in the case diary had clearly implicated the present two petitioners, who were present at the place of occurrence and they had assaulted, as per the eye witnesses' accounts, the deceased at the place of occurrence on 13.11.2022.

9. 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. The grounds cited in this second application on behalf of the petitioners do not appear to be of any substance for re-consideration of the earlier order dated 21.12.2022 passed in A.B. no. 3636/2022.

10. In view of the above discussion, this Court finds not good and sufficient reason for re-consideration of its earlier order dated 21.12.2022. Accordingly, this Court finds that this is not a fit case to extend the privilege of pre-arrest bail to the petitioners and accordingly, the prayer of pre-arrest bail made in this application, preferred for the second occasion, is rejected.

JUDGE

Comparing Assistant