

GAHC010098302023



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

Case No. : AB/1670/2023

MAJOR ALI AND 3 ORS.
S.O. LT. KASUMUDDIN, R.O. VILL. GADESHALI PAM, P.S. SARTHEBARI,
DIST. BARPETA, ASSAM

2: DELBAR ALI @ DILWAR ALI
S.O. ISMAIL ALI
R.O. VILL. GADESHALI PAM
P.S. SARTHEBARI
DIST. BARPETA
ASSAM

3: KABER ALI
S.O. LT. JADU MIYA
R.O. VILL. GADESHALI PAM
P.S. SARTHEBARI
DIST. BARPETA
ASSAM

4: RAFIQUE ALI @ RAFIK ALI
S.O. LT. SALIM UDDIN AHMED
R.O. VILL. GADESHALI PAM
P.S. SARTHEBARI
DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM.

Advocate for the Petitioner : MR. S A AHMED

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 12.06.2023

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

2. This Anticipatory bail petition has been filed by the petitioners, namely, 1. Major Ali, 2. Delbar Ali @ Dilwar Ali, 3. Kaber Ali, 4. Rafique Ali @ Rafik Ali are apprehending arrest in connection with Sarthebari Police Station Case No. 251/2021, registered under Sections 457/376/306 of IPC added Section 143 of IPC (corresponding to GR Case No. 3437/2021).

3. The learned counsel for the petitioners submits that charge-sheet in the matter has already been filed vide charge-sheet No. 368/21 dated 27.12.2021.

4. The learned counsel for the petitioner submits that as per the FIR lodged by the informant allegations made are against the FIR named accused. Allegation is with regard to commission of rape. So far as the petitioners are concerned, they are not the FIR named accused. It is submitted that the FIR was lodged on 29.06.2021 and thereafter charge-sheet has been filed. Now the petitioners are apprehensive that upon

appearance before the Court having competent jurisdiction they shall be arrested. This Court had called for the scanned copies of the LCR from the competent Court which is Judicial Magistrate First Class, Barpeta in connection to PRC No. 17/2022.

5. Upon due perusal of the scanned copies of the LCR it is found that in the case dairy there is no specific materials against the petitioners in respect of the alleged offences. However their apprehension at this moment is that upon hearing before the competent Court they shall be taken into custody.

6. This Court is of the view that in the face of law laid down by the Apex Court in ***Siddharth Vs State of Uttar Pradesh and Anr***, reported in ***(2022) 1 SCC 676*** and Judgment dated 20.03.2023 rendered in ***Mahdoom Bava Vs Ventral Bureau of Investigation*** in Criminal Appeal No.....of 2023 (Arising out of SLP (Crl) No. 376 of 2023), it is no longer *res integra* that appearance of the accused persons pursuant to summons being issued do not necessarily in all cases require orders directing the accused to be taken into custody as a matter of course. When the law has already been laid down by the Apex Court, no further orders are necessary to be passed by this Court.

7. In view of the law laid down by the Apex Court, this anticipatory bail petition is disposed of directing the petitioners to appear before the Competent Court in connection with PRC

No. 17/2022, before the Court of Judicial Magistrate First Class, Barpeta.

8. Upon their appearance, the petitioners are at liberty to make necessary prayers before the Competent Court and the Competent Court upon consideration of the matter on its merits and taking into consideration the law laid down by the Apex Court will pass appropriate order. This application may be preferred by the petitioners within a period of one week from today. If any such applications as directed are filed by the petitioners by 19.06.2023, the same shall be disposed of by the competent Court taking note of the law laid down by the Apex Court in ***Siddharth Vs State of Uttar Pradesh and Anr (supra)***.

9. Till 19.06.2023, no coercive action will be taken against the petitioners.

JUDGE

Comparing Assistant