

GAHC010098402023



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

Case No. : Bail Appln./1637/2023

ABDUR REZZAK @ ABDUL REZZAK AND 2 ORS.
S/O AYNAL HOQUE
R/O VILL- SOUTH BHURAKATA P.S. MANKACHAR,
DIST. SOUTH SALMARA MANKACHAR, ASSAM

2: SIRAJUL HOQUE @ BADSHA
S/O ABDUL REZZAK
R/O VILL- SOUTH BHURAKATA P.S. MANKACHAR

DIST. SOUTH SALMARA MANKACHAR
ASSAM

3: REZABUL ISLAM @ REZAFUL KARIM
S/O ABDUL REZZAK
R/O VILL- SOUTH BHURAKATA P.S. MANKACHAR

DIST. SOUTH SALMARA MANKACHAR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

03.08.2023

- 1.** Heard Mr. S. C. Biswas, learned counsel for the petitioners. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor representing the State of Assam.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973 has been preferred by the petitioners, namely, *1. Abdur Rezzak @ Abdul Rezzak, 2. Sirajul Hoque @ Badsha and 3. Rezabul Islam @ Rezaful Karim* who are detained behind the bar since 30.12.2022 in connection with Sessions Case No. 27/2023 corresponding to Mankachar P.S. Case No. 915/2017 under Sections 448/326/325/302/34 of the Indian Penal Code.
- 3.** The accusation in this case is that on 22.12.2017 one Mokesina Khatun lodged an FIR before the Superintendent of Police, South Salmara, *inter-alia*, alleging that on 20.12.2017 at about 9.30 A.M., the accused persons named in the FIR including the present petitioners forcibly took out the father of the informant from his home and assaulted him as a result of which he sustained serious injuries. Later on, on 21.12.2017, the father of the informant succumbed to his injuries. The Superintendent of Police, South Salmara, Mankachar, forwarded the said FIR to the In-charge of Kalapani Police Out Post and later on Mankachar P.S. Case No. 915/2017 was registered and investigation was initiated. The present petitioners were arrested on 30.12.2022 during the course of investigation. Ultimately, on completion of investigation, charge-sheet was

laid against the present petitioners under Sections 448/326/325/302/34 of the Indian Penal Code against the present petitioners and fifteen witnesses were listed as prosecution witnesses in the charge-sheet. Thereafter, on 16.05.2023, the charge under Sections 302/34 of the Indian Penal Code has been framed against the present petitioners. When the said charge was read over and explained to the present petitioners, they pleaded not guilty and claimed to be tried.

4. The learned counsel for the petitioners submits that the petitioners are detained behind the bar since 30.12.2022 and though there is material against the accused No. 1 only however, he assaulted the deceased out of provocation. It is also submitted that against other two petitioners, there is no evidence against them under Section 302 of the Indian Penal Code. The learned counsel for the petitioners has also submitted that as the investigation has already completed and charges are framed, there is no justifiable reason to keep the present petitioners behind the bars as they are permanent resident of village South Bhurakata under Mankachar Police Station and they are ready to face the trial under any conditions which may be imposed by the Court.

5. On the other hand, learned Additional Public Prosecutor has submitted that there are incriminating materials against the present petitioners and as the charge has been framed under Sections 302/34 of the Indian Penal Code which is a grave offence, he has opposed the grant of bail to the present petitioners.

6. I have considered the submissions of learned counsel for both sides and have perused the materials on record including the scanned copy Sessions Case 27/2023 and PRC Case No. 344/2023 as well as case diary of Mankachar Police Station Case No. 915/2017.

7. It appears that the present petitioners are detained behind the bar since last 216 days which is a considerable period of incarceration. It also appears that though there are prima facie materials against the present petitioners, therefore, charge has been framed against them under Section 302/34 of the Indian Penal Code, however, there is no material to justify any reasonable apprehension that if they are released on bail they would temper the witnesses or the evidence or that they would evade the trial.

8. Under such circumstances, there appears to be no justifiable cause to continue detention of the present petitioners in custody pending trial. The presumption of innocence of the accused during trial does not justify their continue detention unless there is a reasonable apprehension that if granted bail, they would temper the evidence or would not cooperate in the trial and may evade the process of Court. There is no material on record which would justify drawing of such a presumption against the present petitioners.

9. In view of above, the petitioners, namely, *1. Abdur Rezzak @ Abdul Rezzak, 2. Sirajul Hoque @ Badsha and 3. Rezabul Islam @ Rezaful Karim* are hereby allowed to be released on bail of Rs.50,000/- (Rupees Fifty Thousand) only each with two sureties of like amount to the satisfaction of learned Trial Court with following conditions:-

- (i) The petitioners shall cooperate in his trial in Sessions Case No. 27/2023 and shall appear before the learned trial court as and when so required by learned trial court;
- (ii) The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him or her from disclosing such facts before the trial court.

10. With the above observation, the instant bail application is disposed of.

JUDGE

Comparing Assistant