

GAHC010103952023



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

Case No. : AB/1727/2023

ATARUL ISLAM
S/O ABDUL AZAD
R/O BOALIA, P.O. RADHAMADHAB HAT,
P.S. MANKACHAR, DIST. SOUTH SALMARA MANKACHAR, ASSAM, PIN-
783131

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 17.08.2023

Heard Mr. N.J. Dutta, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Addl. P.P. for the State.

2. Apprehending arrest in connection with Mankachar P.S. Case No.

188/2023 under sections 147/148/149/447/427/302 IPC, the petitioner Md. Atarul Islam has filed this application for pre-arrest bail under Section 438 CrPC.

3. The learned counsel for the petitioner has submitted that the petitioner is a school teacher and has been falsely implicated in the alleged offence and that he was not present at the place occurrence at the time of the alleged assault on the informant's side and at that time the petitioner was sitting in his father's grocery shop at Boalia Bazar. It was also submitted that the deceased was the aunt of the petitioner and he had no dispute or quarrel with his aunt and that there was no quarrel between the two families. Accordingly, it was submitted that the petitioner has been implicated only to hamper his service career.

4. The learned Addl. P.P. has produced the case diary and has opposed the prayer for bail.

5. Perused the case diary. The prosecution case is that on 28.04.2023, an FIR was lodged by Akidul Islam before the Mankachar P.S., stating that on 27.04.2023, at about 8.30 PM, the accused persons, namely, Atarul Islam, Akhirul Islam, Abdul Azad, Lipi Sultana, Mofidul Islam, had trespassed into his house armed with *dao*, dagger, rod and wooden *batam* (i.e. sawn wooden piece), and broke the windows of his house and when his sister Azima Khatun had obstructed them, accused no. 1 hit his sister's head with a piece of log with an intention to kill her, thereby causing injury on her head and the other accused persons kicked his sister. His sister was brought to Gazarikandi Hospital, where she was referred outside and that she died while being taken to Guwahati. Accordingly, Mankachar P.S. Case No. 188/2023 under sections 147/148/149/447/427/302 IPC was registered.

6. From the case diary, it is noted that several eye-witnesses examined by the I.O. have specifically named the petitioner as the accused who had attacked the deceased with a wooden *batam* (i.e. sawn wooden piece). The group was armed with *dao*, dagger and wooden *batam*. As per the post mortem report, "... the death was due to come as a result of the injuries sustained over the head as described. All the injuries were ante mortem and caused due to blunt force impact."

7. It is noted that pursuant to interim bail granted by this Court by order dated 09.06.2023, the petitioner had appeared before the I.O. and his statement has been recorded. Nonetheless, the case diary discloses sufficient incriminating materials against the petitioner of assaulting the deceased with a wooden *batam*, which has caused her death. Therefore, although the petitioner had appeared before the I.O. and his statement was recorded, yet, the Court is of the opinion that the petitioner is not entitled to the privilege of pre-arrest bail.

8. Therefore, the prayer for pre-arrest bail by Md. Atarul Islam i.e. the petitioner is declined. The interim bail granted to the petitioner by order dated 09.06.2023 is recalled and revoked.

9. This application is disposed of.

10. Return back the case diary.

JUDGE

Comparing Assistant