

GAHC010106052023



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

Case No. : Bail Appln./1710/2023

MUBARAK ALI @ MOBAROCK ALI AND 6 ORS
S/O LATE ALKASH ALI
R/O AZARA LOHARMIRZAPUR
P.S. AZARA
DIST. KAMRUP (M) ASSAM

2: RAJA GHOSH
S/O LATE NIRANJAN GOSH
R/O BHOJO GAON
P.S. SONARI
DIST. CHARAIDEO
ASSAM

3: KALYAN KALITA
S/O LATE BHABEN KALITA
R/O KHANAPARA
UDAY NAGAR

RAJIB GANDHI PATH
P.S. BASISTHA
DIST.KAMRUP (M)
ASSAM

4: KAMAL BARMAN
S/O SRI LANKESWAR BARMAN
R/O KHARUWAJAN
P.S. BARAMA
DIST. KAMRUP (M)
ASSAM

5: NABAJYOTI BORO
S/O SRI PAIRAM BORO
R/O WARD NO. 6

JYOTI NAGAR

MANGALDOI
P.S. MANDALDOI
DIST. DARRANG
ASSAM

6: HIMADRI SONOWAL
W/O RAJA GHOSH
R/O BHOJO GAON
P.S. SONARI
DIST. CHARAIDEO
ASSAM

7: KAROBI CHOUDHURY
W/O KAMAL BARMAN
R/O KHARUWAJAN
P.S. BARAMA
DIST. KAMRUP (M)
ASSAM
VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. C K NATH
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 01.06.2023

Heard Mr. Y. S. Mannan, 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. Mubarak Ali @ Mobarock Ali, 2. Raja Ghosh, 3. Kalyan Kalita, 4. Kamal Barman, 5. Nabajyoti Boro, 6. Himadri Sonowal and 7. Karobi Choudhury seeking bail in connection with Basistha P.S. Case No. 259/2023 registered under Section 395 of IPC. The petitioners were arrested on 10.05.2023 and since then he has been in custody.

3. The learned counsel for the petitioners submits that an FIR dated 10.05.2023 was lodged by the informant, one Ram Siromoni Tiwari, wherein it was alleged that some persons, who were staying as tenants in houses built over a plot of land measuring 4 katha 1 lecha at Ananta Path at Basistha under Dispur Revenue Circle of Beltola Mouza, Patta No.44 and Dag No. 1547, 1133. It is submitted that on 04.05.2023 a group of 10/12 unidentified persons armed with weapons entered the said premises and threatened the tenants, tied them up and robbed all the valuable belongings present there. They also made the tenants to vacate the land forcefully. When the tenant made hue and cry, some of the neighbours came out. One of the miscreants was identified as Hemanta Boro @ Sumit. It was alleged that these miscreants issued threats against the informant as well as the people staying as tenants on the said land.

4. Upon FIR being received and registered as Basistha P.S. Case No. 259/2023, the investigations were initiated and the petitioners were arrested on 10.05.2023 and since then he has been in custody.

5. The learned counsel for the petitioners submits that this is a land dispute and a civil suit between the two parties is pending before the Court of learned Civil Judge No.3, Kamrup (M) at Guwahati. It is submitted that the defendant in the suit is the complainant in the instant FIR. The Plaintiffs in the suit claimed to be the owners of the land of which the present petitioner is residing.

6. The learned counsel for the petitioners submits that the allegations made in the FIR are false. The petitioners have been residing on the land owned by Sri Nakul Boro and Bishu Boro. They are the absolute owners and possessors of a land measuring 2 kathas 9.56 lechas covered by Dag No. 1473 of Patta No. 1737 and Dag No. 1477 of Patta No.1311 situated at Revenue village-Borsajai, Mouza-Beltola, under Dispur Revenue Circle, in the District of Kamrup (Metro), Assam and both the plots of land are abutted with each other.

7. Learned counsel for the petitioners submits that pursuant to the incident which was alleged to have taken place on 04.05.2023, the FIR was lodged after 6 (six) days on 10.05.2023 without there being any explanation for delay of lodging. Meanwhile, a suit being Title Suit No. 270/2023 and injunction order passed in Misc (J) Case No.455/2023 in connection with Title Suit No. 270/2023 was passed on 08.05.2023 directing both the parties to maintain status quo with regard to possession and alienation of schedule A and B land till the next date fixed.

8. The learned counsel for the petitioners submits that knowing fully well that there is an injunction order passed by the competent Court of civil jurisdiction the informant making false allegations against the petitioner had lodged the instant FIR two days after the grant of the injunction order. It is further submitted that the particulars of the land are wrongly mentioned in the FIR. The correct details are found in the body of the Title Suit as well as in the injunction order dated 08.05.2023.

9. Learned counsel for the petitioners submits that the petitioner is mere tenants living on the land of which the plaintiffs in the Title Suit No. 270/2023 are the absolute owners and therefore there is no scope for the informant or any of his tenants to live over the said land. In view of the matter, the issue is pending before the competent civil Court.

10. The learned counsel for the petitioners submits that the petitioners have been falsely accused of the alleged offences and he has been detained by the police in this matter, which is essentially a civil dispute. Therefore the prayer for bail be granted.

11. This Court by earlier order had called for the case diary. And Mr. B. B. Gogoi, learned Addl. P.P has produced the case diary before this Court.

12. Perusal of the case diary reveals that the investigation has proceeded only in respect of Section 395 of IPC. No other section is added at this stage of investigation.

13. It is seen that both parties namely, the petitioners as well as the informant and his tenants claim the land to be their own. It is also seen that there is a title suit presently pending disposal before the Court of Civil Judge No.3, Kamrup (M). The investigations in the matter have progressed. Statements of the witnesses have been recorded.

14. Upon due perusal of the case diary, no specific materials are found against the petitioners which incriminates them at this stage of investigation of the offences alleged. No materials are found against the petitioners which suggest that further custodial detention is necessary. No materials are also found from the case diary to suggest that release of the petitioners at this stage of investigation will cause impediment of investigation carried on by the Investigating Officer.

15. Taking all the above into consideration, and upon hearing the learned counsels for the parties, this court is of the view that the prayer for bail by the petitioners can be granted. Accordingly, petitioners are directed to be released on bail forthwith subject to executing a bail bond of Rs.30,000/- (Rupees thirty thousand) only each with one local surety of like amount to the satisfaction of the Chief Judicial Magistrate, Kamrup (M). The bail, granted however, subject to the following conditions:-

- i) The petitioners shall continue to appear before the police and cooperate with the Investigating Officer as and when required, till

completion of investigation.

ii) The petitioners shall not change his residence or place of business, without prior written permission from the Court of Chief Judicial Magistrate, Kamrup (M).

iii) That the petitioners shall not hamper or tamper with the investigation in any manner; and

iv) That the petitioners 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.

16. If any of the conditions are found to be violated by the petitioners, then the Investigating Officer shall be at liberty to seek cancellation of the bail granted to the accused.

17. With the above direction, the bail petition is allowed for and disposed of.

18. Return the Case Dairy.

JUDGE

Comparing Assistant