

GAHC010112902023



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

Case No. : Bail Appln./1882/2023

MD ASHRAF ALI AND ANR
S/O- LATE SIKENDER ALI, R/O- VILL- GOWALTALI, P.S. BISWANATH
CHARIALI, DIST.- BISWANATH, (ASSAM)

2: MD. ANOWAR HUSSAIN
S/O- LATE SIKENDER ALI
R/O- VILL- GOWALTALI
P.S. BISWANATH CHARIALI
DIST.- BISWANATH
(ASSAM)

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MD. I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 12.06.2023

Heard Mr. I Hussain, learned counsel appearing for the petitioners. Also heard Mr. R.J.Baruah, learned Additional Public Prosecutor appearing for the State of Assam.

2. The bail application has been preferred by the petitioners, namely, **1. Md. Ashraf Ali** and **2. Md. Anowar Hussain** seeking bail in connection with Biswanath Chariali P.S. Case No. 66/2023 (GR.No.1157/2023) under Sections 420/427/406/326/207/34 of IPC.

3. The learned counsel for the petitioners submits that an FIR dated 14.05.2023 was lodged by the informant, one Md.Hussain Ahmed, wherein it was alleged that on 05.02.2023, there was a fight between the petitioners and the informant and his brother in respect of purchase of land and transaction of money between them. In the ensuing fight, it is alleged that the petitioner No. 2 assaulted the brother of the informant who is also named as Anowar Hussain with a *khukri* and because of which, he suffered grievous injury on his head.

4. Pursuant thereto the petitioners have been arrested in connection with the aforesaid case. Since the date of arrest, which is 15.05.2023, they have been in custody.

5. This Court vide the order dated 31.05.2023 had called for the case dairy. Case diary called for is produced before this Court and is carefully perused.

6. From the Case diary along with injury report, it is seen that injury sustained by the brother of the informant who is named Anowar Hussain is stated to be grievous in nature. Matter is under investigation. The statement of the petitioners along with other witnesses has been recorded.

7. From the case diary, it is seen that the materials available in the case dairy *prima-facie* are incriminating in so far as the petitioner No.2 is concerned in respect of the offences alleged. However, no such specific incriminating materials are seen in so far as the petitioner No.1 is concerned.

9. Accordingly, upon giving my anxious thoughts to the submissions made and the materials available in the case diary, this Court is of the view that considering the

period of detention undergone and in view of the absence of any specific materials against the petitioner No.1, the prayer for bail in so far as the petitioner No.1 is concerned can be granted. However, in so far as the prayer for bail of the petitioner No.2 is concerned, in view of specific materials which incriminate the petitioner No.2, his prayer for bail cannot be granted at this stage and as such, the prayer for bail of the petitioner No. 2 is rejected.

10. Accordingly, the bail petition is partly allowed. The petitioner **1. Md. Ashraf Ali** is directed to be released on bail forthwith subject to executing a bail bond of Rs.30,000/- (Rupees thirty thousand) only with one local surety of like amount to the satisfaction of the **Chief Judicial Magistrate, Biswanath Chariali**. The bail, granted however, subject to the following conditions:-

- i) The petitioner No.1 shall continue to appear before the police and cooperate with the Investigating Officer as and when required, till completion of investigation.
- ii) The petitioner No.1 shall not change his residence or place of business, without prior written permission from the Court of Chief Judicial Magistrate, Biswanath Chariali.
- iii) That the petitioner No.1 shall not hamper or tamper with the investigation in any manner; and
- iv) That the petitioner No.1 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.

11. If any of the conditions are found to be violated by the petitioner No.1, then the Investigating Officer shall be at liberty to seek cancellation of the bail granted to the

accused.

12. With the above direction, the bail petition is partly allowed for the petitioner No.1 and disposed of.

13. Return the Case Dairy.

JUDGE

Comparing Assistant