

GAHC010129482023



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

Case No. : AB/2131/2023

SHAHJAHAN ALI
S/O AKBOR ALI
R/O KADAMTALA
PT.II
P.O. AND P.S. BILASIPARA
DIST. DHBURI, ASSAM
PIN-783348

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : PP, ASSAM

Linked Case : AB/1932/2023

SHAHJAHAN ALI
S/O AKBOR ALI
R/O KADAMTALA PT.II
P.O. AND P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783348

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. M U MONDAL
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 30.06.2023

1) Heard Mr. B.C. Das, learned Senior counsel assisted by Mr. M.U. Mondal, learned counsel for the petitioner, also heard Mr. R.J. Boruah, learned Additional Public Prosecutor appearing for the state of Assam.

2) By this common order, two anticipatory bail applications, namely Anticipatory Bail Application No 1932 of 2023 and Anticipatory Bail Application No 2131 of 2023 are proposed to be disposed of as both relates to the same incident .

3) Anticipatory Bail Application No 1932 of 2023 has been filed by the present petitioner, Shajahan Ali, under section 438 of the Code of Criminal Procedure, 1973, apprehending his arrest in connection with Bilasipara P.S. Case No. 206/2023 u/s 457/302 and Anticipatory Bail Application No 1932 of 2023 has been filed by the present petitioner apprehending his arrest in connection with Bilasipara P.S. Case No. 210/2023 under Section 120B/302/201/109 of the Indian Penal Code.

4) The facts relevant for consideration of the instant bail application, in brief,

are as follows: -

a) That, on 25/05/2023, at about 7.30 pm, one Padmapani Borah, SI of Police of Bilasipara Police Station lodged an FIR before the Officer-in-Charge of Bilasipara Police Station, *inter alia*, alleging that on that day, at about 02.11 AM, a telephonic information was received informing that some unknown miscreants have shot down one Basher Ali of Bilasipara Ward No-8. On receipt of the said information, the first informant accompanied by the Officer-in-Charge of Bilasipara Police Station proceeded to the place of occurrence of offence and found that one person (Basher Ali) was lying on his bed with shot wound on his head. During search of the place of occurrence, one empty cartridge and a screw of the broken door hook was also recovered. On receipt of the said FIR, Bilasipara P.S. Case No. 206/2023 u/s 457/302 of the Indian Penal Code read with Section 27 of the Arms Act, 1959 was registered and one Dewan Rahizuddin Ahmed, SI of Police was entrusted with the investigation of the said case.

b) Thereafter, on 26/05/2023, another written '*ejahar*' was lodged by one Jinnat Ali, who is the brother of the deceased Basher Ali, before Officer-in-Charge of Bilasipara Police Station, in connection with the killing of Basher Ali, wherein the present petitioner and six other persons were named as accused. The Officer-in-Charge of Bilasipara Police Station received the said '*ejahar*' by making Bilasipara Police Station GD Entry No 827 dated 27/5/2023, however, no separate case was registered.

c) Thereafter, on 31/5/2023, one Manash Jyoti Saikia, SI of Police of

Bilasipara Police Station lodged an FIR, before Officer-in-Charge of Bilasipara Police Station, *inter alia*, alleging that the present petitioner, who is alleged to be involved in connection with Bilasipara P.S. Case No. 206/2023 u/s 457/302 of the Indian Penal Code read with Section 27 of the Arms Act, 1959, relating to murder of one Basher Ali, has been absconding and during investigation of said case, it was found that the his wife Rukiya and Sahanur have abetted and have conspired with the main accused to commit murder of Basher Ali. It was also alleged that they have harbored the present petitioner in some secret place. On receipt of the said FIR, Bilasipara P.S. Case No. 210/2023 u/s 120B/302/201/109 of the Indian Penal Code was registered and one Ishan Jyoti Saikia, SI of Police was entrusted with the investigation of the said case.

5) Mr. B.C. Das, learned senior counsel for the petitioner has submitted that the present petitioner has been falsely implicated in the case relating to murder of Basher Ali. It is submitted that at the time when the alleged offence occurred, the present petitioner was attending to a patient (Hafiza Bewa) in the Dhubri Medical College and in this regard petitioner has also submitted a representation, on 27/05/2023, to the Superintendent of Police, Dhubri for collection and preservation of CCTV footage of Dhubri Medical College for the relevant period of time. Learned Senior Counsel also submitted that to pressurize the present petitioner, his family members were illegally detained by police since 4:30 AM on 25/05/2023, that is, even before lodging of the FIR on 25/05/2023 at 7:30 PM. Learned Senior Counsel for the petitioner has also submitted that the present petitioner is being targeted due to not obliging the

illegal demands of the earlier Investigating Officer of Bilasipara P.S. Case No. 206/2023 u/s 457/302.

6) Learned Senior Counsel for the petitioner has also submitted that the brother-in-law of the petitioner had also approached this Court by filing a *Habeus Corpus* petition which was registered as W.P(Crl.) 20/2023 wherein, by order dated 09/06/2023, a division bench of this Court directed to investigate the case by an officer not below the rank of Additional Superintendent of Police of any neighboring district of Dhubri. Learned Senior Counsel for the petitioner has also submitted that the present petitioner is innocent and he has been falsely implicated in this case only for the reason that he had business dealings with the deceased. Learned Senior counsel for the petitioner has also submitted that the petitioner is apprehending arrest and prays for a favorable order under section 438 of the code of criminal procedure, 1973 stating that he shall abide by any condition imposed on him and that he will co-operate in the fair investigation of the case.

7) Mr. R.J. Baruah, learned Additional Public Prosecutor representing the State, has submitted that the Court of Learned Sub-Divisional Judicial Magistrate(M), Bilasipara has allowed amalgamation of Bilasipara P.S. Case No. 206/2023 and Bilasipara P.S. Case No. 210/2023 as both the cases emanate from same incident. It is also submitted that the investigation of the same has been entrusted to Smt. Geetanjali Doley, Additional Superintendent of Police, CID, Assam. Learned Additional Public Prosecutor has also placed before this court, in sealed envelope, an up-to-date status report of the investigation submitted by the Additional Superintendent of Police, CID, Assam. Learned Additional Public Prosecutor has also produced the case diaries of Bilasipara P.S. Case No. 206/2023 as well as Bilasipara P.S. Case No. 210/2023.

8) Mr. R.J. Baruah, learned Additional Public Prosecutor opposed the prayer for anticipatory bail of the present petitioner on the ground that the offence involved in this case is heinous as well as pre planned and there are incriminating materials against the petitioner in the case diary.

9) I have considered the submissions made by learned counsel for both sides. I have perused the case diaries of Bilasipara P.S. Case No. 206/2023 as well as Bilasipara P.S. Case No. 210/2023. I have also perused the up-to-date status report of the investigation submitted, in sealed envelope, by the Additional Superintendent of Police, CID, Assam.

10) At this stage, where the only question before this court is only as to whether benefit of anticipatory bail may be granted to the present petitioner or not, I'm refraining myself from a detailed discussion of the materials available in the case diary, as much as same may affect a fair investigation of the case. I shall only refer to bare minimum facts which are necessary for consideration of the present anticipatory bail petition. From the materials in the case diary, it appears that the deceased Bashir Ali was attacked, while he was sleeping, at about 1:30 AM, on 25/05/2023 and the materials available in the case diary shows that at that time the present petitioner was in Dhubri Medical College. Though, learned Additional Public Prosecutor submits that this was intentionally done by the present petitioner to hoodwink the police and that the present petitioner is the mastermind behind the killing of Basher Ali, however, at this stage, materials in the case diary only shows that the present petitioner was in Dhubri Medical College at the time when Basher Ali was killed at Bilasipara. Though, a person who was not present at the place where the offence was committed, may still be booked for criminal conspiracy for commission of that offence or for abetting commission of the said offence. However, on perusal of

the case diary, it appears, at this stage, apart from suspicion, no convincing material is there in the case diary. Suspicion howsoever strong cannot take place of the evidence. Though, the interrogation of the present petitioner is necessary for fair investigation of this case, however, the materials in the case diary, at this stage, does not justify custodial detention of present petitioner. Moreover, even after 36 days of the alleged offence the police have failed record the statement of the present petitioner.

11) For the reasons stated in foregoing paragraphs the present petitioner, namely, Shajahan Ali, is hereby directed to surrender before the Investigating Officer, i.e., the Additional Superintendent of Police, CID, Assam on 05.07.2023 at the office of the Additional DGP CID H.Q., Assam Ulubari Guwahati 781007 and shall cooperate with the Investigating Officer in fair completion of the investigation of the case. If the present petitioner surrenders before the Investigating Officer, on the aforesaid date, in the event of his arrest in connection with Bilasipara P.S. Case No. 206/2023 or Bilasipara P.S. Case No. 210/2023, he shall be released on bail of ₹ 50,000/-with two sureties of like amount to the satisfaction of the arresting authority subject to following conditions-

(a) The Petitioner shall appear before the Investigating Officer, i.e., the Additional Superintendent of Police, CID, Assam on 05.07.2023 at the office of the Additional DGP CID H.Q., Assam Ulubari Guwahati 781007 thereafter, as and when called upon to do so by the Investigating Officer.

(b) That the petitioner shall co-operate with the Investigating Officer in fair completion of the investigation of Bilasipara P.S. Case No. 206/2023 as well as Bilasipara P.S. Case No. 210/2023

(c) That the petitioner 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 from disclosing such facts to the Investigating Officer or to the Court

(d) Violation of any of the above condition would be a good ground for cancellation of anticipatory bail granted to the present petitioner.

12) Send back the case diary of Bilasipara P.S. Case No. 206/2023 as well as Bilasipara P.S. Case No. 210/2023. The up-to-date status report in the sealed envelope shall also be returned back to the Investigating Officer of the case.

13) The Anticipatory Bail Application No 1932 of 2023 and Anticipatory Bail Application No 2131 of 2023 are accordingly disposed of.

JUDGE

Comparing Assistant