

GAHC010123252023



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

Case No. : AB/2050/2023

MD. HAMID ALI AND ANR.
S/O MAHIM ALI,
VILL.- BULLUT/ NATUN SARABARI, P.S.- HAJO, DIST.- KAMRUP, ASSAM,
PIN- 781102.

2: MD. BOLLA LI @ RUPFUL ALI
S/O MD. HAMID ALI
VILL.- BULLUT/ NATUN SARABARI
P.S.- HAJO
DIST.- KAMRUP
ASSAM
PIN- 781102

VERSUS

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

Advocate for the Petitioner : MR. N AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 12-06-2023

Heard Mr. N. Ahmed, learned counsel for the petitioners and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the

petitioners viz. [1] Md. Hamid Ali and [2] Md. Bolla Ali @ Rupful Ali have prayed for pre-arrest bail, apprehending their arrest, in connection with Hajo Police Station Case no. 1045/2020, registered under Sections 147/148/448/427/379/ 307/506, Indian Penal Code [IPC], for the second occasion after rejection of their previous pre-arrest bail application, A.B. no. 736/2021 by this Court, by an order dated 26.10.2021 after perusal of the materials available in the case diary, collected during the course of investigation carried out so far, produced by the learned Additional Public Prosecutor on that date.

3. In the First Information Report [FIR] lodged on 05.10.2020, the informant has named 12 [twelve] persons as accused. The allegation is made to the effect that at around 02-30 p.m. on that day, the accused persons armed with deadly weapons, entered the pharmacy of the informant's husband named Aminur Medical Hall and caused damage to the medicines worth Rs. 5,00,000/-. The pharmacy was vandalized and furniture in the pharmacy were damaged. Further allegation is to the effect that they took an amount of Rs. 3,00,000/- from the cash counter and assaulted the employees in the pharmacy as well as the father of the informant.

4. The previous pre-arrest bail application was preferred by the 5 [five] petitioners viz. [1] Md. Hamid Ali, [2] Md. Siddique Ali, [3] Md. Kharu Ali, [4] Md. Riaz Ali @ Siraj Ali and [5] Md. Balla Ali @ Rupful. When this Court perused the materials in the case diary of Hajo Police Station Case no. 1045/2020 on 26.10.2021, it was found that the independent witnesses in their statements recorded under Section 161, CrPC, mentioned about the presence of the two petitioners herein. The materials in the case diary clearly indicated about the involvement of the two petitioners in the incident dated 05.10.2020. Having found the nature of incriminating materials available in the case diary against the two petitioners, the Court did not extend the benefit of pre-arrest bail under Section 438, CrPC to the two petitioners herein, along with other 3 [three] petitioners in A.B. no. 736/2021.

5. It is settled that after rejection of application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered

with or where the earlier finding has become obsolete.

6. In the instant pre-arrest bail application, the petitioners have averred that the investigating agency has been searching them by visiting their residences since 2020 but somehow, the petitioners have managed to evade such arrest. It is their contention that they were not involved to the alleged incident and their names are shown in the FIR merely on suspicion and presumption. The above grounds contended in the instant pre-arrest bail application, preferred for the second time after rejection of the petitioners' previous pre-arrest bail application, cannot be considered to be of any substance for reconsideration of the previous order dated 26.10.2021 passed in A.B. no. 736/2021. In the absence of any good and sufficient reasons, this pre-arrest bail application being bereft of any merit, is not entertained and consequently, the same is dismissed.

JUDGE

Comparing Assistant