

GAHC010125562023



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

Case No. : AB/2063/2023

ABDUL BAREK @ BAREK ALI AND 4 ORS
S/O LT. HAJI MAMUD ALI
VILL- SHIMLABARI PART-II,
P.S. MERERCHAR
DIST. BONGAIGAON, ASSAM

2: ABDUL JALIL AHMED @ ABDUL JALIL
S/O ABDUL BAREK @ BAREK ALI
VILL- SHIMLABARI PART-II
P.S. MERERCHAR
DIST. BONGAIGAON
ASSAM

3: ABDUL BATIN
S/O ABDUL BAREK @ BAREK ALI
VILL- SHIMLABARI PART-II
P.S. MERERCHAR
DIST. BONGAIGAON
ASSAM

4: ABDUL HOQUE
S/O LT. HAJI MAUD ALI
R/O SHIMLABARI PART-I
P.S. MERERCHAR
DIST. BONGAIGAON
ASSAM

5: ABDUS SOBAHAN
S/O LT. ABDUL MOJID
R/O SHIMLABARI PART-I
P.S. MERERCHAR
DIST. BONGAIGAON
ASSA

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 ROBIN PHUKAN**

ORDER

22.08.2023

Heard Mr. NJ Dutta, learned counsel for the applicants. Also heard Mr. RJ Baruah, learned Addl. P.P. for the State respondent.

2. Apprehending arrest in connection with Mererchar Police Station case No. 35/2023, registered under Sections 143/341/326/307 of IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicants, namely, 1. Abdul Barek @ Barek Ali, 2. Abdul Jalil Ahmed @ Abdul Jalil, 3. Abdul Batin, 4. Abdul Hoque and 5. Abdus Sobahan for grant of pre-arrest bail.

3. The above noted case has been registered on the basis of one FIR lodged by the informant, namely, Nurul Hussain on 30.05.2023. The essence of allegation made in the FIR is that on 27.05.2023 at about 09:30 p.m. one Asuruddin, maternal uncle of the informant, Nurul Hussain was proceeding to the house of his relative namely, Salam Ali and then the accused persons, namely, Abdul Barek @ Barek Ali, Abdul Jalil Ahmed @ Abdul Jalil, Abdul Batin, Abdul Hoque and Abdus Sobahan restrained him in the mid way and assaulted

by means of dager and fala and caused injuries on different parts of his body and the accused no. 1 assaulted Asuruddin with fala and the accused no. 2 stabbed over the head of Asuruddin by means of dager as a result of which Asuruddin became unconscious.

4. Mr. Dutta, learned counsel for the applicants submits that the applicant nos. 3, 4 and 5 namely, Abdul Batin, Abdul Hoque and Abdus Sobahan were granted pre-arrest bail by this Court, vide an order dated 12.06.2023, and pursuant to the said order, they have appeared before the I.O. and their statements have been recorded and they have also been cooperating with the Investigating Agency and therefore, Mr. Dutta contended to allow their prayer.

5. Further, Mr. Dutta, learned counsel for the applicants submits that as per the injury report, the injury sustained by the victim is simple in nature caused by sharp object and as such, Section 326 IPC is not attracted herein this case and that the applicant nos. 1 and 2 are also ready to cooperate with the Investigating Agency and therefore Mr. Dutta contended to allow their prayer also.

6. On the other hand, Mr. RJ Baruah, learned Addl. P.P. by producing the case diary before this Court along with the injury report of the victim and submits that though the injury sustained by the victim is simple in nature, yet the same was caused on the vital part of the body i.e. head of the victim and therefore, Mr. Baruah contended to dismiss the prayer of the applicant nos. 1 and 2, who have also been implicated by victim in his statement recorded under Section 161 of the CrPC.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the application and the documents placed on record and

also perused the case diary with the assistance of learned Additional Public Prosecutor.

8. It appears that the applicant nos. 3, 4 and 5 have been granted interim protection by this Court on 12.06.2023, and pursuant to the said order, they have appeared before the I.O. and their statements have been recorded and they have also been cooperating with the Investigating Agency. In view of the above, their custodial interrogation seems to be not warranted in the interest of the investigation. Accordingly, the prayer in respect of the nos. 3, 4 and 5 stands allowed and the interim order dated 12.06.2023 is hereby made absolute, in the same terms and conditions.

9. On the other hand, in view of the injuries sustained by the victim and also the materials collected so far in the case-diary, this Court is of the view that custodial interrogation of the applicant nos. 1 and 2, Abdul Barek @ Barek Ali and Abdul Jalil Ahmed @ Abdul Jalil is warranted in the interest of the investigation. Accordingly, the prayer in respect of the applicant nos. 1 and 2 stands rejected.

10. In terms of above, this AB stands disposed of.

11. The case diary be returned.

JUDGE

Comparing Assistant