

GAHC010126012023



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

Case No. : AB/2067/2023

NOSIR UDDIN BARBHUIYA @ NOSIR UDDIN AND 2 ORS
S/O LATE SUNAHOR ALI BARBHUIYAN
R/O VILL- BOROITOLI, PART-II, P.O. AND P.S. KALAIN, PIN-788815 IN THE
DISTRICT- CACHAR, ASSAM

2: NIZAM UDDIN @ LAL
S/O LATE ABDUL MANNAN
R/O VILL- BOROITOLI
PART-II
P.O. AND P.S. KALAIN
PIN-788815 IN THE DISTRICT- CACHAR
ASSAM

3: JIABUR RAHMAN BARBHUIYAN @ JIAUR RAHMAN
R/O VILL- BOROITOLI
PART-II
P.O. AND P.S. KALAIN
PIN-788815 IN THE DISTRICT- CACHAR
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N K KALITA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 12-06-2023

Heard Mr. N.K. Kalita, 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] Nosir Uddin Barbhuiya @ Nosir Uddin, [2] Nizam Uddin @ Lal and [3] Jiabur Rahman Barbhuiya @ Jiaur Rahman have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Kalain Police Station Case no. 447/2022 registered for offences under Sections 395/394/427/307, Indian Penal Code [IPC], for the third occasion after rejection of their two previous pre-arrest bail applications, that is, [i] A.B. no. 3430/2022, preferred along with 6 [six] other persons; and [ii] A.B. no. 147/2023; by orders, dated 05.12.2022 & dated 20.01.2023 respectively. The previous pre-arrest bail application, A.B. no. 3430/2022 was preferred by the present 3 [three] petitioners along with 6 [six] petitioners viz. [1] Jamir Uddin, [2] Monowar Hussain, [3] Salim Uddin, [4] Mohim Uddin @ Moyum Uddin, [5] Najmul Hoque Barbhuiya @ Najrul Hoque and [6] Azmul Hoque Barbhuiya @ Ajrul Hoque.

3. The First Information Report [FIR], in connection with Kalain Police Station Case no. 447/2022 was lodged on 27.09.2022. As per the First Information Report [FIR], the informant was intercepted by the 11 [eleven] nos. of accused persons, named in the FIR, at around 12.30 a.m. in the night intervening 25.09.2022 and 26.09.2022. As per the FIR, the informant was proceeding at that time towards his house at Village -Boroitoli Part-II, Kalain by driving his vehicle bearing registration no. AS-11/K-9624. The accused persons intercepted his vehicle by blocking the road by another vehicle bearing registration no. ML-11/2618 [Alto] and thereafter, the accused persons had allegedly assaulted him resulting into causing severe injuries to the person.

4. The previous pre-arrest bail application, A.B. no. 3430/2022 came up for consideration on 05.12.2022 and on that date, the learned Additional Public Prosecutor produced the concerned case diary containing materials collected during the course of investigation carried out till then. After perusal of the materials in the case diary, this Court while declining the prayer for pre-arrest bail for these 3 [three] petitioners, extended the benefit of pre-arrest bail to the other 6 [six] petitioners.

4.1. The relevant excerpts of the order dated 05.12.2022 are quoted herein for ready reference :-

“6. The materials in the case diary, collected during the course of the investigation carried out so far, go to indicate that the informant was waylaid by the group of assailants at around 12.30 a.m. in the night intervening 25.09.2022 and 26.09.2022. The informant was inside his vehicle bearing registration no. AS-11-K-9624, alone at that time.

7. In the incident, the vehicle of the informant had got damaged and the informant also received number of injuries on his person. The statements of the independent witnesses, recorded under Section 161[1] CrPC, have corroborated about the incident of waylaying the vehicle of the informant by a group of assailants and assault on him. In the statements of the independent witnesses, there is no mention about Jamir Uddin [the petitioner no. 3], Monowar Hussain [the petitioner no. 4], Salim Uddin [the petitioner no. 5], Mohim Uddin @ Moyum Uddin [the petitioner no. 6], Najmul Hoque Barbhuiya @ Najrul Hoque [the petitioner no. 7], and Azmul Hoque Barbhuiya @ Ajrul Hoque [the petitioner no. 8], playing overt roles in the attack on the informant. The independent witnesses in their statements, have identified amongst the group of assailants [1] Jiabur Rahman Barbhuiya @ Jiaur Rahman [the petitioner no. 1], [2] Nosir Uddin Barbhuiya @ Nosir Uddin, [the petitioner no. 2], and [3] Nizam Uddin @ Lal [the petitioner no. 9] and these petitioners have been were identified in the group of assailants who had attacked the informant and who had played overt roles in the attack.

8. Having regard to the nature of complicity and involvement of Jiabur Rahman Barbhuiya @ Jiaur Rahman [the petitioner no. 1], Nosir Uddin Barbhuiya @ Nosir

Uddin [the petitioner no. 2] and Nizam Uddin @ Lal [the petitioner no. 9] in the attack carried out on the informant, this Court is of the considered view that the benefit of pre-arrest bail cannot be extended to the petitioner no. 1, petitioner no. 2 and petitioner no. 9.

9. In so far as the other petitioners are concerned, as the independent witnesses have not attributed any overt act in respect of them, this Court is of considered view that the benefit of pre-arrest bail can be extended to the petitioner no. 3 to the petitioner no. 8, viz. [1] Jamir Uddin [the petitioner no. 3]; [2] Monowar Hussain [the petitioner no. 4]; [3] Salim Uddin [the petitioner no. 5]; [4] Mohim Uddin @ Moyum Uddin [the petitioner no. 6]; [5] Najmul Hoque Barbhuiya @ Najrul Hoque [the petitioner no. 7]; and [6] Azmul Hoque Barbhuiya @ Ajrul Hoque [the petitioner no. 8]; in connection with Kalain Police Station Case no. 447/2022.”

5. When the petitioners preferred another pre-arrest bail application, A.B. no. 147/2023, it was projected that the petitioners were falsely implicated in Kalain Police Station Case no. 447/2022. It was submitted that on the alleged date of occurrence, two other accused persons who are relatives of the petitioners, met with an incident with the informant's car and as a result, the informant's car was damaged and for the same, the informant demanded a sum of Rs. 1,00,000/- from the two accused-persons, named in the FIR, with the threat that the incident would be telecast in the informant's news portal, *The News Plus* in a different manner. It was submitted that an altercation ensued between the said two accused persons, who were already arrested and released subsequently on bail, and the informant, there was some physical obstructions by the said two arrested accused persons. The Court declined to accept such submissions and rejected the prayer for pre-arrest bail by dismissing the petitioners' second pre-arrest bail application A.B. no. 147/2023 by an order dated 20.01.2023.

6. In the present pre-arrest bail application, the petitioners have mentioned that they could know that there are no incriminating materials against them and the allegations narrated in the FIR are false and are afterthought. It is averred that the alleged vehicle, which were shown to be involved in the alleged incident were shown seized prior to the date

of incident, that is, on 25.09.2022 vide G.D. Entry no. 509 at about 11-30 a.m. and 3-45 p.m. respectively, whereas on the other hand, as per the alleged FIR, the incident took place at around 12-30 a.m. on 20.09.2022. At the cost of repetition, it is to be mentioned that when this Court perused the materials in the case diary on 05.12.2022 for consideration of the prayer for pre-arrest bail of the 9 [nine] petitioners in A.B. no. 3430/2022 including the present 3 [three] petitioners, the Court had found that the independent witnesses in their statements, had identified the 3 [three] petitioners herein amongst the group of assailants, and the three petitioners were identified from the group of assailants, who had attacked the informant and who had played the overt roles in the attack. The Court had further found that the materials in the case diary had clearly indicated that the informant was waylaid by a group of assailants at around 12-30 a.m. in the night intervening 25.09.2022 and 26.09.2022 and the informant was inside his vehicle bearing registration no. AS-11/A-9624 alone at that time. While extending the benefit of pre-arrest bail to the other petitioners therein, the prayer for pre-arrest bail in respect of the present 3 [three] petitioners herein were declined because of nature of complicity and involvement of the present 3 [three] petitioners in the attack carried out on the informant.

7. 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.

8. The grounds cited in the instant application, preferred by the three petitioners for the third occasion, do not appear to be of any substance for re-consideration of the earlier two orders, dated 05.12.2022 passed in A.B. no. 3430/2022 and dated 20.01.2023 passed in A.B. no. 147/2023.

9. Having heard the learned counsel for the parties and the grounds urged in the instant application, preferred for the third occasion, this Court does not find any good and sufficient reason for reconsideration of the earlier two orders, dated 05.12.2022 passed in A.B. no. 3430/2022 and dated 20.01.2023 passed in A.B. no. 147/2023. Thus, the instant application

for pre-arrest bail lacks merit and the same is not entertained. Consequently, the application stands dismissed.

JUDGE

Comparing Assistant