

GAHC010126662023



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

Case No. : Bail Appln./2029/2023

SHAFIKUL ISLAM AND ANR
S/O- MD. HAFIZUDDIN
RESIDENT OF VILLAGE- HABI DUNGA,
P.S. BAGHBAR,
DIST.- BARPETA (ASSAM).

2: JANNAL HOQUE @ JANNATUL HOQUE
S/O- MD. JALILUR RAHMAN

VILLAGE- KARAGARI GAON

P.S. PATACHARKUSHI

DIST.- BARPETA (ASSAM)

VERSUS

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

Advocate for the Petitioner : MD B ISLAM

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

26.07.2023

Heard Mr. N. J. Dutta, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, (1) Shafikul Islam, and (2) Jannaul Hoque @ Jannatul Hoque who were shown arrested in connection with Jagiroad P.S. Case No. 192/2022 under section 328/392/302/34 of the Indian Penal Code on 01.06.2022.

The accusation in this case is that on 24.04.2022, one Jonmoni Begum, lodged an FIR before the Officer-in-Charge of Jagiroad Police Station *inter-alia*, alleging that father of the first informant, namely, Sarifuddin Ahmed was given some poison by some unknown persons, who also took away his belongings, including the mobile phone, clothes and money and left him in that condition. Later on, he was taken to Jagiroad Civil Hospital and thereafter to Gauhati Medical College and Hospital, where he died on 01.04.2022. On receipt of the said FIR, Jagiroad P.S. Case No.192/2023 was registered. Later on, after completion of investigation, in the said case charge-sheet was laid against both the present petitioners on 30.06.2022 and thereafter, Sessions Case No. 194/2022 was registered and both the petitioners are facing trial, remaining in custody. Charges were also framed against both the petitioners under section 328/307/379/34 of the Indian Penal Code.

It is submitted by learned counsel for the petitioners that prior to showing their arrest in the instant case, the petitioner no. 1 was arrested on 14.05.2023

in connection with another FIR lodged by one, Achyut Krishna Das and petitioner no. 2 was arrested against the same FIR on 17.05.2022.

Learned counsel for the petitioner has also submitted that both the petitioner no. 1 is the resident of village Habi Dunga under Baghbar Police Station, whereas, petitioner no. 2 is the resident of village Karagari Gaon under Patacharkushi and they are ready to face trial and co-operate in the trial of Sessions Case No. 194/2022, if they are allowed to go on bail.

Learned Additional Public Prosecutor has submitted that there are 9(nine) prosecution witnesses listed in the charge-sheet laid against the present petitioners and till now out of 9(nine) prosecution witnesses, only 2(two) prosecution witnesses are examined.

Learned Additional Public Prosecutor opposes the grant of bail to the present petitioners on the ground that other witnesses are yet to be examined.

Considering the submissions made by learned counsel for both sides and considering the fact that only 2(two) witnesses were examined out of 9(nine) listed witnesses, it appears that trial may not culminate immediately and there may not be any necessity of custodial detention, if both the petitioners co-operates in their trial. It also appears that both the petitioners were detained behind the bars in connection with Sessions case No. 194/2022 for last 1 year, 1 month and 11 days.

Considering the long period of detention already undergone by the present petitioners, they are allowed to be released on bail of Rs. 30,000/- each with two sureties of like amount, one of whom, should be a local surety from Morigaon, to the satisfaction of the learned Sessions Judge, Morigaon, subject to the conditions that (i) they shall co-operate in their trial in Sessions Case No. 194/2022 and shall appear before the Trial Court as and when

required by the learned Trial Court; and (ii) they 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/her from disclosing such facts to Court or to any police officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.

With the above observation, this bail application is hereby disposed of.

JUDGE

Comparing Assistant