

GAHC010136102023



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

Case No. AB/2144/2023

SUKUMAR DEBNATH AND 4 ROS.
S/O JATINDRA DEBNATH R/O VIL. CHITHILAGRAM P.S FAKIRGRAM DIST.
KOKRAJHAR ASSAM

2: RANJIT DEBNATH
S/O SUKUMAR DEBNATH R/O VIL. CHITHILAGRAM P.S FAKIRGRAM DIST.
KOKRAJHAR ASSAM

3: BISWAJIT DEBNATH
S/O SUKURAM DEBNATH R/O VIL. CHITHILAGRAM P.S FAKIRGRAM DIST.
KOKRAJHAR ASSAM

4: MANITOSH DEBSHARMA
S/O LT. MADHAB DEBSHARMA VIL. TEESTA PALLY P.O.AND P.S CHOPRA
DIST. UTTAR DINAJPUR WEST BENGAL

5: SURESH SAHA
S/O SUNIL KR. SAHA VILL. CHITHILA PS FAKIRAGRAM DIST. KOKRAJHAR
ASSAM
VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. D BORA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 04-07-2023

Heard Mr. B.K. Mahajan, learned counsel for the petitioners. Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor, Assam.

This Anticipatory Bail petition under Section 438 of the Code of Criminal Procedure, 1973, has been filed by the petitioners, namely, 1) Sukumar Debnath, 2) Ranjit Debnath, 3) Biswajit Debnath, 4) Manitosh Debnath and 5) Suresh Saha, who are apprehending their arrest in connection with Bongaigaon Police Station Case No.231/2023 registered under Section 143/ 448/ 325 of the IPC read with Section 3(1)(x) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 added Sections 120(B)/ 354/ 354 (B) of the IPC.

This Court by order dated 16.06.2023 had granted anticipatory bail to the petitioner nos. 1 & 2. The bail in respect of the petitioner nos. 3, 4 & 5 was not considered on that date as their names did not match with the names reflected in the FIR. However, prayer for anticipatory bail of the petitioner nos. 3, 4 & 5 was not rejected and the Court directed that the prayer for anticipatory bail of the petitioner nos. 3, 4 & 5 may be considered after perusal of the case diary. Today, learned Additional Public Prosecutor, has produced the case diary and this Court has perused the same.

The case diary reflects that the injuries caused are minor and the petitioners and the persons injured are known to each other from some time past. On the date of occurrence in view of certain disagreement which occurred between the petitioner and the person injured, an altercation took place

between them and accordingly, because of the commotion that arose the informant's son sustained some injuries (bruises).

Learned Additional Public Prosecutor submits that the injuries are simple in nature and no grievous injuries are noticed. Investigation has progressed in the meantime although no charge-sheet has been filed in the meantime.

Having heard the learned counsel for the parties and upon perusal of the pleading on record, this Court is of the view that the FIR was received and registered as Bongaigaon Police Station Case No.231/2023 registered under Section 143/ 448/ 325 of the IPC read with Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 added Sections 120(B)/ 354/ 354 (B) of the IPC. Perusal of the Act, 1989 reveals that Section 3(1) (x) of Act, 1989 reads as under:

3.. Punishments for offences of atrocities.—

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) gives, any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a

Scheduled Caste or a Scheduled Tribe;

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

From a perusal of the FIR and the pleadings as well as the case diary, no materials are seen to attract the provision of Section 3 (1) (x) of the Schedule Castes and Schedules Tribes (prevention of Atrocities) Act, 1989. There is no allegation that any act was committed by the petitioners which will attract the Provisions of Section 3 (1) (x) of the Act of 1989. Since upon a plain reading of the FIR as well as upon perusal of the materials available in the case diary, it is seen that the allegations made do not attract the provisions of Section 3 (1)(x) of the Act of 1989, as such, this Court is of the view that the bar under Section 18 of the Act of 1989 will also not be applicable in the facts of the case and therefore, the matter is taken up for hearing and disposal.

Upon hearing the learned counsels for the parties and upon considering all the pleadings on record as well as the materials available in the case diary and also taking into account the order passed by a co-ordinate Bench of this Court dated 16.06.2023, passed in AB No.2144/2023 as well as the order dated 30.06.2023 in BA No.2233/2023, this Court is of the view that the prayer for

anticipatory bail of the petitioners can be granted.

This Court is of the opinion that in the event of arrest of the petitioner nos. 3, 4 & 5 in connection with the above noted case, they shall be released on pre-arrest bail upon furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) each with 1 (one) local surety of like amount to the satisfaction of the arresting authority, subject, of course to the following conditions:

- (i) That the petitioner nos. 3, 4 & 5 shall appear before the Investigating Officer within 7 (seven) days from today;
- (ii) That the petitioner nos. 3, 4 & 5 shall not hamper or tamper with the investigation in any manner;
- (iii) That the petitioner nos. 3, 4 & 5 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 Court or to any police office; and
- (iv) That the petitioner nos. 3, 4 & 5 shall not leave the jurisdiction of concerned Police Station without obtaining prior written permission from the concerned Investigating Officer of the case.

In the event, the petitioners are found to have violated any of the above conditions or are found to be involved in other offences, the Investigating Officer shall be at liberty to apply for recall/cancellation of the interim bail granted to the petitioners.

With the above observations and directions the Anticipatory Bail application stands disposed of.

Return the case diary.

JUDGE

Comparing Assistant