

GAHC010132392023



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

Case No. : Bail Appln./2164/2023

ABU BAKKAR ALI AND 2 ORS
S/O LT. KURPAN ALI
VILL- KOLBARI
P.S. SORBHOG
DIST. BARPETA, ASSAM

2: AMZAD ALI
S/O LT. KURPAN ALI
VILL- KOLBARI
P.S. SORBHOG
DIST. BARPETA
ASSAM

3: ABU TALEB
S/O LT. KURPAN ALI
VILL- KOLBARI
P.S. SORBHOG
DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR M H AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 24-07-2023

Heard Mr. M.H. Ahmed, learned counsel for the petitioners. Also heard Ms. S.H. Bora, learned Additional Public Prosecutor, representing the State of Assam.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by three petitioners, namely, 1. **Abu Bakkar Ali**, 2. **Amzed Ali** and 3. **Abbu Taleb**, who are detained behind the bars since 15.02.2023 (since last 159 days) in connection with PRC P.S. Case No. 1420/2023, corresponding to G.R. Case No. **305/2023** under section 120(B)/147/148/341/326/302/435 of the Indian Penal Code pending for committal before the Court of learned Additional Chief Judicial Magistrate, Barpeta.

The accusation in this case is that on 15.02.2023, one **Sariful Ali**, had lodged an FIR before Officer-in-Charge of **Sarbhog** Police Station *inter-alia*, alleging that total 37 numbers of accused persons named in the FIR had assaulted the father and brother of the first informant and also damaged the properties including the bike of the brother of the first informant by burning the same. It is also alleged that due to the assault the father of the first informant, namely, **Hasmat Ali** and the brother, namely, **Saiful Ali** were succumbed to the injuries later on. On receipt of the said FIR, **Sarbhog** police station Case No. 31/2023 was registered and the present petitioners were arrested on 15.02.2023.

Learned counsel for the petitioners submits that the petitioners are languishing behind the bars since last 159 days, whereas they ought to have been released on expiry of 90th day of their detention as in the instant case, the

Investigating Officer has filed incomplete charge-sheet on the 90th day of the date of detention of the present petitioners only with the sole objective to prevent the present petitioners to get the benefit of default bail under section **167 (2)** of the Code of Criminal Procedure, 1973.

Learned counsel for the petitioners has brought to the notice of the Court the endorsement of the Investigating Officer in the charge-sheet, wherein he has categorically stated that *"although the investigation of the case is almost complete, yet the seized blood stain sword, lathi etc. sent for Forensic examination to Forensic Laboratory, Guwahati and the exhibited Forensic Report is yet to be received and the CDR of the arrested accused persons are yet to be collected. Hence, I will be careful for submitting the complete charge-sheet of the case after receiving the Forensic Report and the CDR."*

Learned counsel for the petitioners submits that the categorical mention by the I.O. in the charge-sheet that the investigation is almost complete itself shows that the investigation is not yet fully complete and as mandated by **section 173** Cr.P.C. The charge-sheet may be laid only after completion of the investigation of a case. To substantiate his contentions, learned counsel for the petitioners also cited ruling of Hon'ble Supreme Court of India in Ritu Chabaria Vs. Union of India & Ors. reported in "2023 SCC Online SC 502" wherein, Hon'ble Supreme Court of India has categorically laid down that without completing the investigation of a case a charge-sheet or prosecution complaint cannot be filed by the Investigating Agency only to deprive and arrested accused of his right to default bail under Section 167 (2) of the Code of Criminal Procedure, 1973.

Hon'ble Supreme Court of India also observed that such a charge-sheet, if filed by the Investigating Authority without first completing the investigation,

would not extinguish the right of the default bail under Section 167 (2) of the Code of Criminal Procedure, 1973.

Learned Additional Public Prosecutor submits that considering the gravity of the offence involved in the instant case, she opposes the grant of bail to the present petitioners.

I have considered the submissions made by learned counsel for both sides as well as perused the materials on record, including the scanned copy of the record of PRC Case No. 1420/2023 as well as case diary of Sarbhog P.S. Case No. 31/2023.

On perusal of the charge-sheet laid in this case, it appears that the charge-sheet was laid on 16.05.2023, i.e. on the 90th day of the arrest of the present petitioners. It also appears that at the last page of the charge-sheet, the Investigating Officer, has categorically stated that the investigation is almost complete. However, is yet to collect the blood stain weapons which were sent for forensic examination as well as CDR of the arrested accused persons. Hence, bare perusal of the charge-sheets shows that same has been laid before completing the investigation as mandated under Section 173 of the Code of Criminal Procedure, 1973.

In view of the statutory provision of Section 167 (2) of the Criminal Procedure, 1973 classified by the Hon'ble Supreme Court of India in **Ritu Chabaria Vs. Union of India** (supra), the petitioners are entitled to be released on bail.

In view of above, this Court is of considered opinion that the present petitioners are entitled to be released on bail. Accordingly, the petitioners, namely, (i **Abu Bakkar Ali**, 2. **Amzed Ali** and 3. **Abbu Taleb** are allowed to go on bail of Rs. 30,000/- each with a suitable surety of like amount to the

satisfaction of the learned Additional Chief Judicial Magistrate, Barpeta, with conditions that (i) they shall appear before the learned Trial Court as and when required to do so and shall co-operate in the trial; 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 the Court.

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

JUDGE

Comparing Assistant