

GAHC010134022023



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

Case No. : Bail Appln./2161/2023

SURHAB ALI AND 11 ORS
S/O LATE KARKAS ALI
R/O KALBARI
P.S. SORBHOG
DIST. BARPETA, ASSAM

2: ABU BAKKAR ALI
S/O LATE KURPAN ALI
R/O KALBARI
P.S. SORBHOG
DIST. BARPETA
ASSAM

3: AMJAD ALI
S/O LATE KURPAN ALI
R/O KALBARI
P.S. SORBHOG
DIST. BARPETA
ASSAM

4: ABU TALEB
S/O LATE KURPAN ALI
R/O KALBARI
P.S. SORBHOG
DIST. BARPETA
ASSAM

5: BAHARUL ISLAM
S/O LATE SOLEMAN SHEIKH
R/O KALBARI
P.S. SORBHOG
DIST. BARPETA
ASSAM

6: ABDUL MOMIN
S/O LATE SHOKIYAT ALI
R/O KALBARI
P.S. SORBHOG
DIST. BARPETA
ASSAM

7: ABDUL SALAM
S/O AWAZ UDDIN
R/O KALBARI
P.S. SORBHOG
DIST. BARPETA
ASSAM

8: JAHANGIR ALI
S/O ABDUL SAL SHEIKH
R/O KALBARI
P.S. SORBHOG
DIST. BARPETA
ASSAM

9: RASHID ALI
S/O SISHIR ALI
R/O KALBARI
P.S. SORBHOG
DIST. BARPETA
ASSAM

10: ALI HUSSEIN
S/O SISHIR ALI
R/O KALBARI
P.S. SORBHOG
DIST. BARPETA
ASSAM

11: MOHOMMAD ALI
S/O SISHIR ALI
R/O KALBARI
P.S. SORBHOG
DIST. BARPETA
ASSAM

12: SURAT ALI
S/O SAFIUR RAHMAN
R/O KALBARI
P.S. SORBHOG
DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 24-07-2023

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

This instant bail application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by three petitioners, namely, (i) Surhab Ali, (ii) Abu Bakkar Ali, (iii) Amjad Ali, (iv) Abu Taleb, (v) Baharul Islam, (vi) Abdul Momin, (vii) Abdul Salam, (viii) Jahangir Ali, (ix) Rashid Ali, (x) Ali Hueein (xi) Mohommad Ali and (xii) Surat Ali. It also appears that by order dated 27.06.2023, the name of the petitioner nos. 2, 3 & 4, namely, Abu Bakkar Ali, Amjad Ali and Abu Taleb were strike out from the instant bail application as the said petitioners had preferred separate bail application.

The accusation in this case is that on 15.02.2023, one Sariful Ali, had lodged an FIR before the Officer-in-Charge of Sarbhoj 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 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, Sarbhoh P.S. 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 their detention of the present petitioners only with the sole objective to prevent the present petitioners to get the default bail under section 167 (2) of the Cr.P.C, 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 soared lathi etc. sent to Forensic examination to Forensic Laboratory, Guwahati and the 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 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 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 prohibition 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 who 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 Sarbhoj P.S. Case No. 131/2023 which was requisitioned from the Court of learned.

On perusal of the case diary laid in this case, it appears that the charge – sheet was laid on 16.05.2023, i.e. on the 90th day of 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 stained weapons which were sent for forensic examination as well as CDR of the arrested accused persons. Hence, bare perusal of the charge-sheet would show that it has be 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 clause 2 of the Criminal

Procedure, 1973 explained 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) Surhab Ali, (v) Baharul Islam, (vi) Abdul Momin, (vii) Abdul Salam, (viii) Jahangir Ali, (ix) Rashid Ali, (x) Ali Hueein (xi) Mohommad Ali and (xii) Surat Ali. 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, subject to the condition that they shall continue to co-operate with the Investigating Officer of Barpeta as and when required to do so and shall co-operate in the trial; and shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Investigating Officer.

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

JUDGE

Comparing Assistant