

GAHC010136862023



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

Case No. : AB/2240/2023

KANDARPA HALOI AND 4 ORS
S/O- RAJANI HALOI, R/O- VILL- BECHIMARI, KAITHALKUCHI, P.O.
KAITHALKUCHI, P.S. BELSOR, DIST.- NALBARI (ASSAM)

2: HIRAK BAISHYA
S/O- BRINDA BAISHYA
R/O- VILL- SATHIKUCHI
P.O. KAITHALKUCHI
P.S. TIHU
DIST.- NALBARI (ASSAM)

3: DIPAK TALUKDAR
S/O- BHARAT TALUKDAR
R/O- VILL- SATHIKUCHI
P.O. KAITHALKUCHI
P.S. TIHU
DIST.- NALBARI (ASSAM)

4: HAREN BARMAN
S/O- KALICHARAN BARMAN
R/O- VILL AND P.O. KAITHALKUCHI
P.S. BELSOR
DIST.- NALBARI
ASSAM

5: AJAY TALUKDAR
S/O- DALIM TALUKDAR
R/O- VILL- SATHIKUCHI
P.O. KAITHALKUCHI
P.S. TIHU
DIST.- NALBARI (ASSAM)

VERSUS

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

Advocate for the Petitioner : MS. P BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

03.08.2023

Heard Ms. P. Borah, learned counsel for the applicants. Also heard Ms. S.H. Bora, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. Apprehending arrest in connection with Belsor P.S. Case No.158/2023 registered under Sections 341/324/427/307/392/511/34 IPC, this application under Section 438 Cr.P.C. is preferred by the applicants, namely, (1) Kandarpa Haloi, (2) Hirak Baishya, (3) Dipak Talukdar, (4)Haren Barman and (5) Ajay Talukdar for grant of pre-arrest bail.

3. It is to be noted here that Belsor P.S. Case No.158/2023 has been registered on the basis of one FIR lodged by one Smita Baishya on 14.06.2023, to the effect that on 13.06.2023, at about 8.50 p.m. she and her uncle were returning from her aunt's house, situated at Kaithalkuchi and while they reached the railway crossing, seven persons arrived there and attacked their vehicle and assaulted her and her uncle with stone.

4. Ms. Borah, learned counsel for the applicants submits that though this application is being preferred by five applicants, namely, (1) Kandarpa Haloi, (2) Hirak Baishya, (3) Dipak Talukdar, (4)Haren Barman and (5) Ajay Talukdar, applicant No.2 Hirak Baishya and applicant No.3 Dipak Talukdar have already been arrested and therefore, this application is being pressed for applicant Nos.1, 4 and 5 only. Ms. Borah further submits that

applicant No.4 Haren Barman and applicant No.5 Ajay Talukdar are on interim bail by virtue of the order passed by this Court, dated 23.06.2023. Ms. Borah further submits that pursuant to the said order dated 23.06.2023, applicant Nos.4 and 5 have appeared before the I.O. and their statements have already been recorded and they have been cooperating with the investigating agency and their names also finds no mention in the FIR. However, the name of applicant No.1 Kandarpa Haloi has been mentioned in the FIR. Ms. Borah further submits that the applicants have been falsely implicated and they are innocent and are ready to cooperate with the investigating agency and therefore, it is contended to make the order dated 23.06.2023, absolute in respect of applicant Nos.4 and 5 and to extend the privilege of pre-arrest bail to applicant No.1 Kandarpa Haloi.

5. Whereas, Ms. S.H. Bora, learned Additional Public Prosecutor, Assam has produced the case diary and submits that as per injury report of the complainant and her uncle, no injury could be detected on their persons and the allegations against the applicants are in respect of pelting of stones on the vehicle and that material part of investigation is almost completed.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary produced before this court with the assistance of Ms. S.H. Bora, learned Addl.P.P., Assam.

7. It appears that the applicant Nos.4 and 5 have already appeared before the I.O. and they have been cooperating with the investigating agency and in view of the materials collected so far in the case diary against the applicant Nos.4 and 5 and in view of the cooperation, being extended by them to the investigating agency, this Court is of the view that their custodial interrogation is not warranted. And accordingly, the interim order dated 23.06.2023, in respect of applicant Nos.4 and 5 is hereby made absolute and also considering the materials collected so far in the case diary against the applicant No.1 and also considering the nature of accusation and punishment prescribed for the same and the role played by him in commission of the alleged offence, this Court is inclined to

extend the privilege of pre-arrest bail to applicant No.1. Accordingly, it is provided that in the event of arrest of applicant No.1 Kandarpa Haloi in connection with Belsor P.S. Case No.158/2023, he shall be released on pre-arrest bail on executing a bail bond of ₹ 50,000/- with two sureties of like amount to the satisfaction of the arresting authority. The above privilege is, however, subject to the following conditions:-

- (i) Applicant No.1 shall not leave the jurisdiction of the learned C.J.M., Nalbari, without prior permission.
 - (ii) Applicant No.1 shall appear before the I.O. as and when directed.
 - (iii) Applicant No.1 shall not indulge in hampering the investigation or tampering the witnesses.
8. In terms of above, this bail application stands disposed of.
9. Case diary be sent back.

Sd/- Robin Phukan
JUDGE

Comparing Assistant