

GAHC010150282023



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

**Case No. : Bail Appln./2260/2023**

SAMIRUL ALI AND 5 ORS  
S/O AJID ALI  
R/O VILL-KALBARI  
P.S. SORBHOG  
DIST. BARPETA  
ASSAM  
PIN-781317

2: JIARUL ALI  
S/O FAREJ ALI  
R/O VILL-KALBARI  
P.S. SORBHOG  
DIST. BARPETA  
ASSAM  
PIN-781317

3: RAFIKUL ALI @ RAFIQU  
R/O VILL-KALBARI  
P.S. SORBHOG  
DIST. BARPETA  
ASSAM  
PIN-781317

4: IMAN ALI @ EMAN  
R/O VILL-KALBARI  
P.S. SORBHOG  
DIST. BARPETA  
ASSAM  
PIN-781317

5: BATEN ALI  
R/O VILL-KALBARI  
P.S. SORBHOG

DIST. BARPETA  
ASSAM  
PIN-781317

6: SABUR RAHMAN  
R/O VILL-KALBARI  
P.S. SORBHOG  
DIST. BARPETA  
ASSAM  
PIN-781317  
VERSUS

THE STATE OF ASSAM  
REP. BY THE PP  
ASSAM

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Advocate for : MR. S C BISWAS  
Advocate for : PP  
ASSAM appearing for THE STATE OF ASSAM

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

**ORDER**

**Date : 24.07.2023**

Heard Mr. S. C. Biswas, learned counsel for the petitioners. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State.

This bail application has been preferred under Section 439 of Code of Criminal Procedure, 1973, praying for bail of petitioners, namely, (1) Samirul Ali, (2) Jiyarul Ali, (3) Rafikul Ali, (4) Iman Ali @ Eman, (5) Baten Ali, and (6) Sabur Rahman, who have been detained behind the bar since 15.02.2023 (since last 159 days) in connection with Sorbhog P. S. Case No. 32/2023 corresponding to PRC Case No. 1419/2023 under section 147/326/302/436/427 of the IPC.

The accusation in this case is that on 15.02.2023 Nureja Khatun lodged an FIR before the Officer In-charge of Sorbhog Police Station, *inter-alia*, stating that on 14.02.2023 at about 7.00 am 12 number of accused persons, named in the FIR, including the present petitioners have assaulted the informant and her family members and set the house of the mother in law of the informant on fire. It is also stated in the FIR that due to assault, the mother in law of the informant succumbed to her injuries.

On receipt of the said FIR Sorbhog P. S. Case No. 32/2023 was registered and the present petitioners were arrested on 15.02.2023

Learned counsel for the petitioner submitted that the present petitioner were arrested on 15.02.2023 and the Investigating Officer of Sorbhog P. S. Case No. 32/2023 has submitted a part charge-sheet. The Investigating Officer submitted a part charge-sheet on 16.05.2023 only to prevent the present petitioner to get the benefit of statutory bail under section 167 (2) of the Code of Criminal Procedure, 1973.

Learned counsel for the petitioners submits that the petitioners are entitled to get default bail under section 167 (2) of the Code of Criminal Procedure, 1973 as it has been made clarified by the Hon'ble Supreme Court in "***Ritu Chhabaria vs. Union of India and others***" reported in "**2023 SCC online 502**" wherein Hon'ble Supreme Court has observed that without completing the investigation of a case a charge-sheet or prosecution complaint cannot be filed by investigating agency only to deprive the accused of his right to default bail under section 167 (2) of the Code of Criminal Procedure, 1973.

Hon'ble Supreme Court has also observed such that a charge-sheet, if filed by the investigation agency without first completing the investigation, would not

extinguish the right to default bail under section 167 (2) of the Code of Criminal Procedure, 1973.

Learned counsel for the petitioners has submitted that as in the instant case it is apparent from the perusal of the charge-sheet laid by the Investigation Officer that the same is a part charge-sheet and the investigating officer has categorically stated that final charge-sheet will be submitted only after collection of FSL report, MVI report and injury report.

On the other hand, learned Additional Public Prosecutor submits that there are incriminating material against the present petitioners and she opposes the grant of bail to the present petitioners on that ground.

I have heard considered the submission made by the learned counsel for the petitioners as well as learned Additional Public Prosecutor.

I have also perused the materials placed before me by the learned Additional Public Prosecutor including the scanned copy of the LCR of PRC Case No. 1419 /2023 as well as the charge sheet No. 40/2023 dated 16.05.2023 filed by the Investigating Officer in the instant case.

It appears from the record that the present petitioners were arrested on 15.02.2023 and the Investigating Officer has laid charge-sheet on 16.05.2023 and it has been categorically stated in the charge-sheet that the said charge-sheet is a part charge-sheet and final charge-sheet would be laid only after collection of FSL report, MVI report and injury report.

It appears till now that the final charge sheet has not been laid by the Investigating Officer. The law in this regard has been clarified by Hon'ble Supreme Court in ***Ritu Chhabaria vs. Union of India and others*** (Supra), wherein it has been stated that without completing the investigation of a case, a charge-sheet or prosecution complaint cannot be filed by investigating agency

only to deprive the accused of his right to default bail under section 167 (2) of the Code of Criminal Procedure, 1973.

In the instant case also it appears that the part charge-sheet has been laid only to ensure that the present petitioners remain behind the bar even after completion of the statutory period of the detention which is not mandated by law.

Under the facts and circumstances of present case, this court is of the considered opinion that as the final charge sheet has not been laid and as the charge-sheet No. 40/2023 dated 16.05.2023 has been laid in part only same would not deprive the present petitioners to get the benefit of statutory bail under section 167 (2) of the Code of Criminal Procedure, 1973.

In view of the above, the petitioners, named above are allowed to go on bail on furnishing of bail bond of Rs. 30,000/- (Rupees Thirty Thousand only) each with one surety of like amount to the satisfaction of the learned Additional Chief Judicial Magistrate, Barpeta with the condition that :

1. That the petitioners shall appears before the learned committal court as well as learned trial court .
2. That the petitioners 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 or her from disclosing such facts to the Court.

With the above observations, this bail application is accordingly disposed of.

**JUDGE**

**Comparing Assistant**