

GAHC010144612023



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

Case No. : AB/2342/2023

AMINUR ALI @ AMINUR RAHMAN AND 3 ORS
S/O LATE SAHAD ALI
RESIDENT OF VILLAGE AND PO BHATIPETLA, PS TAMARHAT, DIST
DHUBRI, ASSAM 783334

2: AJMAT ALI
S/O MOHIJUDDIN SK.
RESIDENT OF VILLAGE AND PO BHATIPETLA
PS TAMARHAT
DIST DHUBRI
ASSAM 783334

3: MOSLEM ALI SHEIKH @ MOSLEM ALI
S/O LATE ABDUL SK

RESIDENT OF VILLAGE AND PO BHATIPETLA
PS TAMARHAT
DIST DHUBRI
ASSAM 783334

4: AJIT ALI
S/O LATE BAKTAR ALI
RESIDENT OF VILLAGE AND PO BHATIPETLA
PS TAMARHAT
DIST DHUBRI
ASSAM 78333

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

Advocate for the Petitioner : MR. M HOSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

03.08.2023

Heard Mr. M. Hussain, 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 Tamarhat P.S. Case No.25/2022 under Section 120B/343/201/302 IPC, this application under Section 438 Cr.P.C. is preferred by the applicants, namely, (1) Aminur Ali @ Aminur Rahman, (2) Ajmat Ali, (3) Moslem Ali Sheikh @ Moslem Ali and (4) Ajit Ali for grant of pre-arrest bail.

3. It is to be noted here that the afore-mentioned case has been registered on the basis of one FIR lodged by Afzal Sk on 03.06.2022. The essence of allegation made in the FIR is that on 29.10.2021 one Smt. Rahima Bibi lodged one FIR against his father Hosen Ali and his uncles Osman Ali and Soban Ali stating that his uncle Sahad Ali was kidnapped by them and accordingly, Tamarhat P.S. Case No.264/2021 under Section 365/294/323/354/506/34 IPC was registered and his father and uncle were arrested by police and sent to jail. But, on 01.06.2022, morning at about 7.30 a.m. his kidnapped uncle Sahad Ali was recovered at village Bhati Petla, near river Gangadhar in senseless condition and thereafter, he was taken to Dhubri Civil Hospital for treatment, but he died on 02.06.2022 at about 4.15 a.m. And later on, he came to know that his uncle Sahad Ali was not kidnapped by anybody and the accused persons, namely, Rohima Bibi, Ajmat Ali, Sobir Ali, Aminur Rahman, Abbas Ali, Moslem Ali, Khoybor Ali, Abu Sama Sheikh, Ajid Ali and Mostafa Sk have hatched a conspiracy and concealed him till the date of his recovery and as the matter came to light, Rohima Bibi and Ajmat Ali with the help of other accused

persons administered him poisonous substance and accordingly Sahad Ali died.

4. Mr. M. Hussain, learned counsel for the applicants submits that the I.O. has in the meantime completed the investigation and submitted charge-sheet, being Charge-sheet No.72/2022 under Section 360/343/120B/201/302 IPC showing the applicants as absconder. The learned counsel for the applicants further submits that though the learned Court below, at first instance, issued bailable warrant of arrest, subsequently, non-bailable warrant of arrest was issued against the applicants and that they are innocent and they have been falsely implicated in this case and that as per the final postmortem report, the cause of death of the deceased Sahad Ali was due to cardiac arrest and that the applicants are innocent and they are ready to face the trial and therefore, it is contended to allow the petition.

5. Per contra, Ms. S.H. Bora, learned Additional Public Prosecutor has not controverted the submissions, so advanced by Mr. Hussain, learned counsel for the applicants. However, Ms. Bora submits that this application may be disposed of by directing the applicants to appear before the learned Court below and to approach for regular bail.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned Court below.

7. It is not in dispute that after completion of investigation the applicants have already been charge-sheeted under Section 360/343/120B/201/302 IPC against the applicants showing them as absconder. It also appears from the final opinion regarding the cause of death of the deceased Sahad Ali is that the cause of death was due to cardiac arrest and no poison was detected in the sample of stomach, liver and kidney of the deceased person.

8. Having regards to above and also having regards to the submission advanced at the Bar, this Court is inclined to dispose of this application by directing the applicants to

appear before the learned Court below and to apply for regular bail on or before 21.08.2023 and on such appearance and on filing any application for granting regular bail, the learned Court below shall consider the same in accordance with law. Till such appearance before the learned Court below, this Court is inclined to extend the interim protection to the applicants and it is provided that in the event of arrest of the applicants in connection with Tamarhat P.S. Case No.25/2022, under Section 120B/343/201/302 IPC, they shall be enlarged on interim pre-arrest bail till 21.08.2023. This privilege is however subject to the following three conditions:-

- (i) The applicants shall not leave the jurisdiction of the learned Sessions Judge, Dhubri, without prior permission.
- (ii) The applicants shall appear before the learned Court below on or before 21.08.2023.
- (iii) The applicants shall not indulge in influencing the witnesses.

9. In terms of above, this bail application stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant