

GAHC010149532023



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

Case No. : AB/2374/2023

SAHID ALI @ NUR SAHIDULLA AND ANR.
S/O- GOLAP HUSSAIN,
R/O- VILLAGE- NIZ BARUAJHAR,
P.S.- KHARUPETIA,
DIST.- DARRANG (ASSAM).

2: HABEJ ALI @ HAFIZUR RAHMAN @ HABIJUR RAHMAN
S/O- GOLAP HUSSAIN

R/O- VILLAGE- NIZ BARUAJHAR

P.S.- KHARUPETIA

DIST.- DARRANG (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PUBLIC PROSECUTOR, ASSAM.

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 14.08.2023

Heard Mr. A. Ahmed, learned counsel for the petitioners. Also heard Mr. K. Das, learned Additional Public Prosecutor for the State.

This anticipatory bail application has been preferred under Section 438 of Code of Criminal Procedure, 1973, by the present petitioners, namely, (1) Sahid Ali @ Nur Sahidulla, and (2) Habej Ali @ Hafizur Rahman @ Habijur Rahman praying for grant of pre-arrest bail to the petitioners, who are apprehending their arrest in connection with PRC Case No. 1490/2019 arising out of Kharupetia P.S. Case No. 250/2018 under Sections 498 (A)/325/307/34 of Indian Penal Code.

The accusation in this case is that on 02.08.2018, one Rumana Khatun lodged an FIR before the Officer-in-Charge of Kharupetia Police Station, *inter-alia*, alleging that the accused persons named in the FIR (total four numbers of accused) had subjected the first informant to cruelty and demanded dowry from her.

It is also stated in the FIR that accused No. namely, Md. Afsar Ali is the husband to whom she was married about six years prior to lodging of the FIR. It is alleged that the accused persons named in the FIR tried to kill the first informant.

On receipt of the FIR, Kharupetia P.S. Case No. 250/2018 was registered.

It is submitted by the learned counsel for the petitioner that during the pending of the investigation the present petitioners were allowed to go on bail by police and they co-operated in the investigation. However, after completion

of the investigation, charge-sheet was laid against all the four accused persons named in the FIR including the present petitioners under Section 498A/325/307/34 of the IPC.

The Committal Court i.e. the Court of learned SDJM, Darrang he should process against the present petitioners and apprehending their arrest, the present petitioners approached the Court learned Additional Sessions Judge (FTC) Darrang praying of grant of anticipatory bail.

However, the said Court rejected the anticipatory bail and directed the petitioners to appear before the learned Committal Court.

Thereafter, on 06.06.2023, the petitioners, Habej Ali filed an application bearing No. 3659/2023, showing his cause of absence before the learned Committal Court, however, the said application was rejected and learned Committal Court issued warrant of arrest against the petitioners as well as other absentee co-accused including the first petitioner, namely Sahid Ali therefore, apprehending the arrest the present petitioners have approached this Court seeking an order under Section 438 of the Code of Criminal Procedure, 1973.

Learned counsel for the petitioners has submitted that merely filing of charge-sheet is in itself is not a bar in exercising power of this Court under Section 438 of the Code of Criminal Procedure, 1973 and even after charge-sheet is filed, this Court may issue order under Section 438 of the Code of Criminal Procedure, 1973, if it finds that the petitioners are apprehending their arrest and in support of the said contention learned counsel has relied of the ruling of Hon'ble Supreme Court of India "***Bharat Choudhury and Another VBs. State of Bihar and Another***" reported in **2003 8 SSC 78**.

Learned counsel for the petitioner has also relied on the ruling of Hon'ble Supreme Court of India in ***Mahdoom Bava Vs. Central Bureau of Investigation (Order dated 20.03.2023 passed in SLP Crl. No. 376/2023)*** wherein the Hon'ble Supreme Court of India observed that in some part of the country there seems to be a practice followed in courts to remand the accused to custody the moment, they appear in response to summons.

Learned counsel for the petitioners submits that in the instant case, the charge-sheet has been laid, *inter-alia*, under Section 307 of the Indian Penal Code, also where the maximum punishment is imprisonment for life for which normally the Committal Court due to embargo of Section 437 clause 1 of the Code of Criminal Procedure, 1973, read with Section 209 (a) & (b) of Code of Criminal Procedure, 1973 remands the accused custody if they are not on bail even if they appear before the trial Court in response to the summons issued to them.

Hence, no such circumstances the apprehension raised by the present petitioners appears to be genuine apprehension.

In view of the above discussion, instant anticipatory application filed by the present petitioner namely, (1) Sahid Ali @ Nur Sahidulla, and (2) Habej Ali @ Hafizur Rahman @ Habijur Rahman is hereby disposed of with the observation that the present petitioners shall appear before the Court of learned SDJM (S), Darrang, Mangaldoi within a period of 15 days from the date of this order and if they do so, they shall be allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount to the satisfaction of the learned SDJM (S), Darrang, Mangaldoi, subject to the condition:

1. That the petitioners shall appears before the Committal Court and learned Trial Court as and when so directed by the said Courts and shall co-operate in their trial.
2. 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 Courts.

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

JUDGE

Comparing Assistant