

GAHC010154192023



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

Case No. : AB/2496/2023

ASAN ALI AND 9 ORS
S/O LT. HOJUR ALI
VILL- KHANATUP,
P.O. TELIACHAPARI
P.S. RUPAHIHAT
DIST. NAGAON, ASSAM

2: ABDUL RAJAK @ ABDUL RAZZAK
S/OLT. JOHUR ALI
VILL- KHANATUP
P.O. TELIACHAPARI
P.S. RUPAHIHAT
DIST. NAGAON
ASSAM

3: AIJUL HOQUE
S/O ASAN ALI
VILL- KHANATUP

P.O. TELIACHAPARI

P.S. RUPAHIHAT
DIST. NAGAON
ASSAM

4: AINUL HOQUE
S/O ASAN ALI
VILL- KHANATUP
P.O. TELIACHAPARI

P.S. RUPAHIHAT
DIST. NAGAON
ASSAM

5: ABDUL JALIL
S/O ABDUL RAJAK @ ABDUL RAZZAK
VILL- KHANATUP
P.O. TELIACHAPARI
P.S. RUPAHIHAT
DIST. NAGAON
ASSAM

6: ABDUL MALEK
S/O ABDUL RAJAK @ ABDUL RAZZAK
VILL- KHANATUP
P.O. TELIACHAPARI
P.S. RUPAHIHAT
DIST. NAGAON
ASSAM

7: ABDUL KHALEQUE
S/O ABDUL RAJAK @ ABDUL RAZZAK
VILL- KHANATUP
P.O. TELIACHAPARI
P.S. RUPAHIHAT
DIST. NAGAON
ASSAM

8: JAINAL ABDIN
S/O ABDUL RAJAK @ ABDUL RAZZAK

VILL- KHANATUP
P.O. TELIACHAPARI
P.S. RUPAHIHAT
DIST. NAGAON
ASSAM

9: ABU HANIFA
S/O LATE NUR HUSSAIN
VILL- LAILURI (BARUNGURI)
PO. LAILURI

P.S. RUPAHI
DIST. NAGAON
ASSAM

10: BAHARUL ISLAM
S/O ABU HANIFA
VILL- LAILURI (BARUNGURI)
P.O. LAILURI
P.S. RUPAHIHAT
DIST. NAGAON

ASSA

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

22.08.2023

Heard Mr. A.M. Barbhuiya, learned counsel for the applicants. Also heard Mr. B. Sarma, learned Addl. P.P. for the State respondent.

2. Apprehending arrest in connection with Rupahihat Police Station Case No. 223/2023, registered under Sections 147/148/149/447/326/448/382 of the Indian Penal Code, corresponding to G.R. Case No. 1558/2023, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by 10 numbers of applicants, namely, 1. Asan Ali, 2. Abdul Rajak @ Abdul Razzak, 3. Aijul Hoque, 4. Ainul Hoque, 5. Abdul Jalil, 6. Abdul Malek, 7. Abdul Khaleque, 8. Jainal Abdin, 9. Abu Hanifa and 10. Baharul Islam for grant of pre-arrest bail.

3. The above noted case has been registered on the basis of one FIR lodged by the informant, one, Rahmat Ullah on 05.05.2023, to the effect that on 27.04.2023, at about 08:00 a.m., the accused persons, namely, Asan Ali, Abdul Rajak @ Abdul Razzak, Aijul Hoque, Ainul Hoque, Ashadul Hoque, Abdul Jalil, Abdul Malek, Abdul Khaleque, Jainal Abdin, Abu Hanifa, Baharul Islam and

Jamal Uddin pickup quarrel with him in connection with a disputed land and attacked him along with his sons, namely, Jakir Hussain and Abdul Aziz by means of sharp object like chopper, stick and caused serious injuries to them.

4. Mr. Barbhuiya, learned counsel for the applicants submits that vide an order dated 27.07.2023, this Court was pleased to grant interim protection to the applicant no. 2, Abdul Rajak @ Abdul Razzak and pursuant to the said order, he has appeared before the Court below and he has also been cooperating with the Investigating Agency, and therefore, it is contended to make the interim order dated 27.07.2023, absolute in the same terms and conditions.

5. Mr. Barbhuiya, learned counsel for the applicants further submits that the other applicants are also innocent and there is land dispute between the applicants and the informant of this case and the applicant no. 1, Asan Ali had also lodged one FIR against the first informant of this case and 7 others, upon which Rupahihat PS Case No. 222/2023, under Sections 147/148/149/447/325/307 IPC has been registered and the investigation is going on and the first informant of this case is the aggressor and that the applications are ready to cooperative with the Investigating Agency, and therefore, it is contended that to allow their prayers also.

6. On the other hand, Mr. B. Sarma, learned Addl. PP has produced the case diary before the Court and submits that as per the injury report of the victims, the injuries suffered by Rahmat Ullah is grievous in nature caused by blunt object and he sustained injury over his forehead and the injury sustained by Abdul Aziz and Jakir Hussain are simple in nature caused by blunt object. Further, Mr. Sarma submits that investigation is going on and at this stage, the privilege of pre-arrest bail cannot be granted to the applicants.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the application and the documents placed on record and also perused the case diary with the assistance of learned Additional Public Prosecutor.
8. It appears that pursuant to the order dated 27.07.2023, the privilege of pre-arrest was granted to the applicant no. 2, namely, Abdul Rajak @ Abdul Razzak and pursuant to the said order, he has appeared before the Court below and he has been cooperating with the Investigating Agency. And it also appears that he had sustained grievous injury on his person, in the said incident. Having regards to the above and also having regards to the submissions of the learned Advocates of both sides, this Court is inclined to make the interim order dated 27.07.2023, so far it relates to applicant No.2, is hereby made absolute in the same terms and conditions.
9. On the other hand, having regards to the injuries sustained by the three injured persons and also having regards to the nature of accusation in the punishment prescribed for the same as well as the submissions of the learned Advocates of both sides and also considering the materials collected so far in the case diary, this Court is inclined to allow this application.
10. Accordingly, it is provided that in the event of arrest of the applicant nos. 1 and 3 to 10, in connection with Rupahihat Police Station Case No. 223/2023, under Sections 147/148/149/447/326/448/382 of IPC, they shall be enlarged on a pre-arrest bail, upon furnishing a bail bond of Rs.25,000/- (Rupees twenty five thousand) each, with one (1) local surety of like amount to the satisfaction of the Arresting Authority. The interim bail granted above however, is subject to the following conditions:-

- i. That the applicants shall appear before the Investigating Officer within 10(ten) days from today and co-operate in the investigation as and when required;
- ii. The applicants shall not leave the territorial jurisdiction of the police station, without prior written permission from the learned CJM, Nagaon; and
- iii. That the applicants shall not hamper the investigation or tamper the witnesses in any manner.

11. If any of the conditions are found to be violated by the applicants, then the Investigating Officer shall be at liberty to seek cancellation of the bail granted to the applicants.

12. In terms of above this AB stands disposed of.

13. The case diary be returned.

JUDGE

Comparing Assistant