

GAHC010161862023



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

Case No. : Bail Appln./2567/2023

KUDDUS ALI AND 2 ORS.
S/O AHMED ALI
R/O VILL- KAWAIMARI
P.S. RUPAHIHAT
DIST.NAGAON, ASSAM

2: MD. ZAKIR HUSSAIN
S/O KUDDUS ALI
R/O VILL- KAWAIMARI
P.S. RUPAHIHAT
DIST. NAGAON
ASSAM

3: MD. AJIBUR RAHMAN @ KHAIRUL
S/O HABIBUR RAHMAN
R/O VILL- MUAMARI
P.S. SAMAGURI
DIST. NAGAON
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. G BORAH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 04.08.2023

Heard Ms. G. Borah, learned counsel for the accused/petitioners. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor for the State.

2. This is an application made under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioners, namely, **1. Md. Kuddus Ali, 2. Md. Zakir Hussain and 3 Md. Ajibur Rahman @ Khairul**, in connection with **Raha P.S. Case No. 139/2023, registered under Sections 379/279/302/34.**

3. It has been submitted by the learned counsel for the petitioners that the accused/petitioners have been detained in custody for the last 44 days. It is also submitted that the case was registered under Section 302 IPC but the petitioners have no intention to commit the murder of the deceased. Learned counsel for the accused/petitioners further submitted that as per FIR, when the vehicle was driving, the vehicle hit the father and mother of the informant while they were standing on the road as a result of which, they died. Under such backdrop, it cannot be said that they have intentionally killed the deceased. In support of her submissions learned counsel has cited one case law:- AIR 2000 SC 1930 (Rita Devi & Ors. vs. New India Assurance Co. Ltd. & Ors.)

4. On the other hand, Mr. R.J. Baruah, learned Additional Public prosecutor has raised objection in granting bail to the petitioners by stating that investigation is still going on and there are sufficient incriminating materials against the present petitioners in the case diary.

5. I have considered the submissions made by the learned counsel for the

parties. I have also perused the case diary including the statements of the witnesses recorded under Section 161 Cr.P.C. It appears that the petitioners with a vehicle bearing Regd. No. AS-11-L-7795 came to the village with an intention to commit theft of cows. They committed the theft of a cow but when they tried to load the cow in the vehicle, the complainant woke up and raised hue and cry, as a result of which, the villagers came to the spot. The allegation against the petitioners is that when the petitioners tried to move the vehicle harshly, they hit two persons who were standing on the road, subsequently, they died.

6. In the case of Rita Devi(supra), the Hon'ble Supreme Court observed that:-

“The question, therefore, is can a murder be an accident in any given case ? There is no doubt that 'murder', as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The differences between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.”

7. In view of the aforesaid legal proposition and considering the materials available in the case diary, this Court is of the view that further custodial

interrogation of the accused-petitioners is not necessary in the interest of investigation of the case. Hence, the prayer for bail is allowed.

8. Accordingly, the accused-petitioners, named above, shall be released on bail in connection with **Raha P.S. Case No. 139/2023, registered under Sections 379/279/302/34**, on furnishing bail bond of **Rs.30,000/- each** with **two suitable sureties each** of the like amount, to the satisfaction of learned CJM, Nagaon.

The direction for bail is further subject to the conditions that the accused-petitioners:

(a) shall not leave the territorial jurisdiction of learned CJM, Nagaon, without prior written permission from him;

(b) 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 from disclosing such facts to the Court or to any police officer.

(c) shall appear before the Investigating Police Officer once in a week for six weeks after their release on bail as and when called upon by the Investigating Police Officer till the investigation of the case is completed.

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

10. Send back the case diary.

JUDGE

Comparing Assistant