

GAHC010164242023



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

Case No. : AB/2685/2023

MD. EUSOF ALI AND 3 ORS.
S/O ABDUL JOLIL, VILL-TARANGAJHAR, P.O.-JAMADARHAT, P.S.
FAKIRGANJ, DIST-DHUBRI, ASSAM, PIN-783330

2: MD. LIAKAT ALI
S/O ABDUL JOLIL
VILL-TARANGAJHAR
P.O.-JAMADARHAT
P.S. FAKIRGANJ
DIST-DHUBRI
ASSAM
PIN-783330

3: HABIZUR ISLAM
S/O ABDUL JOLIL
VILL-TARANGAJHAR
P.O.-JAMADARHAT
P.S. FAKIRGANJ
DIST-DHUBRI
ASSAM
PIN-783330

4: ABDUL JOLIL
S/O LT. NAKKU MONDAL
VILL-TARANGAJHAR
P.O.-JAMADARHAT
P.S. FAKIRGANJ
DIST-DHUBRI
ASSAM
PIN-78333

VERSUS

THE STATE OF ASSAM

REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR B B NARZARY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

14.08.2023

Heard Mr. B.B. Narzary, learned Senior counsel, assisted by Mr. S. Chauhan, learned counsel for the petitioners. Also heard Mr. M.P. Goswami, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, (1) Md. Eusof Ali, (2) Md. Liakat Ali, (3) Habizur Islam and (4) Abdul Jolil, who are apprehending their arrest in connection with Fakirganj P.S. Case No. 106/2023 (corresponding G.R. Case No. 1010/2023) under section 147/148/149/326/307/34 of the Indian Penal Code.

The accusation in this case is that on 05.06.2023, one Abdur Rezzak lodged an FIR before the Officer-In-Charge of Fakirganj Police Station, *inter-alia* alleging that the accused persons named in the FIR including the present petitioners assaulted the first informant with iron rods, khurki, dagger etc. with an intention to kill him and cause injuries on his person and when he made hue and cry, the accused persons fled away. On receipt of the said FIR Fakirganj P.S. Case No. 106/2023 was registered.

This application under section 438 is filed by the present petitioners for the second time. Their earlier application for anticipatory bail was rejected on

20.07.2023 after perusal of the case diary.

Learned Senior counsel for the petitioners submits that the nature of injuries suffered by the present petitioners is simple in nature and one of the co-accused namely, Abdul Hashem Ali, who was arrested in connection with this case has already been granted bail by the Court of learned Judicial Magistrate First Class, Dhubri.

Learned Senior counsel for the petitioners has submitted that though the fact that one of the co-accused has been released on bail by the Magistrate Court was not considered by this Court, while rejecting the earlier bail application, neither this Court observed that on the earlier occasions that the injury report does not show the ingredient of section 326 of the Indian Penal Code.

Learned Senior counsel for the petitioners submits that at the best the injury caused to the first informant would be a simple injury which would result in an accusation under section 323 of the Indian Penal Code. In that regard except under section 307 all the sections would be bailable sections.

On the other hand, learned Additional Public Prosecutor submits that for consideration of the second anticipatory bail application some fresh ground has to be there and in the instant case no such fresh grounds were pleaded. Everything which has been pleaded in the instant bail petition was there in the earlier bail petition also. The only fact that the petitioners changed their counsels may not be a ground for favourable consideration of the prayer for anticipatory bail by the Court.

I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record.

It appears that the earlier application for anticipatory bail of the present

petitioners was rejected after perusal of the case diary on the ground that there are incriminating material against the present petitioners which do not justify grant of anticipatory bail to them. There is nothing on record which persuades this Court to change the said observation made in the earlier order dated 20.07.2023, whereby the earlier bail petition was rejected.

As after perusal of the case diary it appears that there are incriminating materials against the present petitioners in the case diary. Hence, this Court is constrained to hold that this is not a fit case for grant of anticipatory bail to the present petitioners. Hence the prayer for bail is rejected.

JUDGE

Comparing Assistant