

GAHC010164492023



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

Case No. : AB/2600/2023

GURIA BEGUM AND ANR
W/O SOFIUL HOQUE
R/O VILL- MODHUSOULMARI PART-II UNDER GAURIPUR POLICE
STATION,
IN THE DISTRICT OF DHUBRI, ASSAM-783301

2: SARUD ALI @ SARUJ ZAMAN SK.
S/O LT. MOKSHED ALI
R/O VILL- MODHUSOULMARI PART-II UNDER GAURIPUR POLICE STATION

IN THE DISTRICT OF DHUBRI
ASSAM-78330

VERSUS

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

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

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

ORDER

28.07.2023

Heard Mr. A.M. Bora, learned Senior counsel, assisted by Mr. S. Nawaz, learned counsel for the petitioners. Also heard Mr. K.K. Das, 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) Guria Begum and (2) Sarud Ali@ Saruj Zaman SK, who are apprehending their arrest in connection with PRC Case No. 937/2023 under section 143/447/323/302 read with section 149 of the Indian Penal Code corresponding to Gauripur P.S. Case No. 03/2023.

The accusation in this case is that on 04.01.2023, one Moinul Haque, lodged an FIR against naming 11(eleven) accused in the said FIR, including the present petitioners, *inter-alia*, alleging that the accused no. 1, named in the FIR, dragged out the victim outside the house of Nur Islam and accused no. 2 and 3 by holding the hands of the victim while accused no. 1 repeatedly stabbed the victim as a result of which he died. Later on, the other accused persons named in the FIR, attacked the dead body with lathis and daggers. On receipt of the said FIR, Gauripur P.S. Case No. 03/2023 has been registered.

Subsequently, investigation was initiated and ultimately on completion of investigation charge-sheet was laid against 19(nineteen) numbers of the accused persons including the present petitioners showing the present petitioners as absconders in the column No. 2 of the charge-sheet.

It is also submitted by the learned Senior counsel for the petitioners that police never apprehended the present petitioners during the course of

investigation and charge-sheet was laid against them showing them to be as absconder and though Court of learned Additional Chief Judicial Magistrate, Dhubri has issued summons to the present petitioners fixing 02.08.2023 as the next date of appearance of the present petitioners before the Court of learned Additional Chief Judicial Magistrate, Dhubri however, present petitioners apprehends that as the Court of learned Additional Chief Judicial Magistrate is a Committal Court and the present case is a case which is exclusively triable by the Court of Sessions, the Committal Court would be having no other options but to commit the case after complying with the provisions of section 207 Cr.P.C. as the present petitioners are not on bail, the learned Committal Court has to remand the present petitioners to the custody and same has caused apprehension of being detained in connection with the PRC Case No. 937/2023.

Learned Senior counsel for the petitioners has also submitted that out of 19(nineteen) accused persons named in the FIR, except the present petitioners all other accused persons are on bail and only present petitioners are left without any protection.

Learned Additional Public Prosecutor on the other hand, submits that there are materials against the present petitioners in the FIR and he opposes the grant of bail to the present petitioners at this stage.

I have considered the submissions made by learned counsel for both sides and perused the materials on record. Though apparently summons have been issued against the present petitioners which at the first look may give an impression that there may not be any apprehension of the present petitioners of getting arrested. However, if we consider the fact that the charge-sheet has been laid, *inter-alia*, under section 302 of the Indian Penal Code which makes the present case exclusively triable by the Court of Sessions and because of the

provisions of section 209(a) of the Code of Criminal Procedure, 1973, the Court of learned Additional Chief Judicial Magistrate, Dhubri, which is only a Committal Court, would be left with no other option but to remand the present petitioners, in the event of their appearance before the said Court, to the custody. Hence the apprehension raised by the present petitioners of getting detained appears to be genuine.

In view of above discussion, this anticipatory bail application is hereby disposed of with a direction that the present petitioners shall appear before the Court of learned Additional Chief Judicial Magistrate, Dhubri in compliance to the summons issued against the present petitioners on 02.08.2023 and in the event they do so, the Court of learned Additional Chief Judicial Magistrate, Dhubri shall allow the present petitioners, namely, (1) Guria Begum and (2) Sarud Ali@ Saruj Zaman SK, to go on bail of Rs. 20,000/- each with a suitable surety of like amount, subject to conditions that, (i) they shall co-operate in their trial when the trial begins in the said case and (ii) they 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/her from disclosing such facts to the Court.

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

JUDGE

Comparing Assistant