

GAHC010173542023



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

Case No. : AB/2784/2023

ABDUL SAHID @ SAHID SHEIKH AND 3 ORS.
S/O MEHER ALI
R/O VILL- KALBARI,
P.O. SORBHOG,
DIST. BARPETA, ASSAM

2: NUR AJIM @ NUR AJIM HUSSAIN
S/O JAKIR HUSSAIN
R/O VILL- KALBARI
P.O. SORBHOG
DIST. BARPETA
ASSAM

3: MOKBUL ISLAM @ MOKBUL ALI
S/O MEHER ALI
R/O VILL- KALBARI
P.O. SORBHOG
DIST. BARPETA
ASSAM

4: MANIRUL ALI
S/O LT. BAKTA JAMAL ALI
R/O VILL- KALBARI
P.O. SORBHOG
DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

O R D E R

29.08.2023.

Heard Mr. S.C. Biswas, learned counsel for the petitioners. Also heard Mr. P.S. Lahkar, learned Addl. P.P., Assam appearing 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) Abdul Sahid @ Sahid Sheikh, (2) Nur Ajim @ Nur Ajim Hussain, (3) Mokbul Islam @ Mokbul Ali, (4) Manirul Ali praying for grant of pre-arrest bail to the petitioners, who are apprehending their detention in connection with PRC Case No. 1419/2023, corresponding to Sorbhog P. S. case No. 32/2023 under Section 147/326/302/ 436/427 of the IPC, which is pending before the Court of learned CJM, Barpeta.

The accusation in this case is that on 15.02.2023, one Musstt. Nureja Khatun lodged an FIR before the Officer-in-Charge of Sorbhog Police Station alleging, inter alia, that on 14.02.2023, at about 7 A.M., twelve numbers of accused persons named in the FIR, including the present petitioners, have assaulted the informant and her family members and set the house of mother-in-law of the informant on fire. It is also stated in the FIR that due to the said assault, the mother-in-law of the informant succumbed to her injuries. On receipt of the said

FIR, the Sorbhog P. S. case No. 32/2023 was registered and investigation was initiated. Ultimately on completion of the investigation, charge sheet was laid against twelve accused persons including the present petitioners. The present petitioners were shown as absconder in the charge sheet.

Mr. S.C. Biswas, learned counsel for the petitioners has submitted that the present petitioners are falsely implicated in the case and they were never searched by the Investigating Officer during the course of investigation. Learned counsel for the petitioner has also submitted that the offence alleged in the FIR has been committed by one Babul Ali who has confessed his guilt during the course of investigation. It is also submitted by the learned counsel for the petitioners that out of the twelve charge sheeted accused persons, five accused persons have already been granted bail by this Court. The learned counsel for the petitioners has also submitted that though the present petitioners were shown as absconders in the charge sheet, the learned committal Court at the first instance correctly issued summons against them. However, without verifying as to whether summons were properly served or not, the Court issued Non-Bailable Warrant of Arrest (NBWA) against them on 14.07.2023, whereas, as per the submission of learned counsel for the petitioners, the learned committal Court ought to have re-issued the summons or ought to have issued Bailable Warrant of Arrest before issuing the NBWA. It is also submitted by the learned counsel for the petitioners that the petitioners are ready to face the trial and they are local residents under the jurisdiction of the learned trial Court, before which the PRC Case No. 1419/2023 is pending.

On the other hand, Mr. P.S. Lahkar, learned Addl. P.P., Assam submits that though one Babul Ali has confessed during the investigation that he is the person, who is responsible for the death of the mother-in-law of the first

informant, however there are materials against the present petitioners also and has opposed the grant of bail to the present petitioners.

I have considered the submissions made by the learned counsel for both sides and have gone through the scanned copy of the case record of PRC Case No. 1419/2023 as well as the connected case diary placed before this Court.

It appears from the records that the learned committal Court issued the NBWA against the present petitioners without verifying as to whether the summons issued to them were properly served or not. It also appears that when the Process Server went to serve the summons to the present petitioners, their houses were found in locked condition. The Court could have issued Bailable Warrant of Arrest, instead of issuing NBWA under such circumstances. More so, in light of observation by this Court in Kabir Ahmed vs. State of Assam, reported in (2011) 1 GLJ 726, the trial Court ought not have issued NBWA.

The facts of this case are such that this Court convinced that the apprehension of getting detained on their appearance, on the strength of the NBWA, issued by the committal Court, is reasonable and therefore, issuance of an order under Section 438 of Code of Criminal Procedure, 1973 is justified in this case.

In view of above, the petitioners, namely, (1) Abdul Sahid @ Sahid Sheikh, (2) Nur Ajim @ Nur Ajim Hussain, (3) Mokbul Islam @ Mokbul Ali, (4) Manirul Ali are hereby directed to appear before the learned committal Court (Court of learned Addl. CJM, Barpeta), within fifteen (15) days from the date of this order and if they do so, within the stipulated time, the learned committal Court shall allow them to go on bail on executing bond of Rs.30,000/- (Rupees thirty thousands) only with one surety of like amount, for each of them. The learned committal Court may impose additional condition(s), which it deems fit and

proper, considering the facts and circumstances of the case, before accepting the bail bonds.

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

JUDGE

Comparing Assistant