

GAHC010176742023



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

Case No. : AB/2855/2023

KASHEM ALI MONDAL @ KASHEM MONDAL AND ANR
S/O- LATE ROHIJ UDDIN MONDAL, RESIDENT OF VILLAGE- FOFONGA
PART-1, P.O. BALBALA, P.S. AGIA, DISTRICT- GOALPARA, ASSAM

2: ABDUL JALIL
S/O- LATE NABAB ALI
RESIDENT OF VILLAGE- FOFONGA PART-1
P.O. BALBALA
P.S. AGIA
DISTRICT- GOALPARA
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY P.P., ASSAM

Advocate for the Petitioner : MR. A GONI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 29.09.2023

1. Heard Mr. A. Goni, learned counsel for the petitioners. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor appearing for the State of

Assam.

2. This application under section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioners namely, *1. Kashem Ali Mondal @ Kashem Mondal 2. Abdul Jalil* who are apprehending their arrest connection with Agia PS Case No. 111/2023 under Sections 120(B) / 147 / 148 / 149 / 354 / 302 of the Indian Penal Code.

3. The gist of accusation against the present petitioners is that on 15.07.2023, one Hanif Ali lodged an FIR before Officer-in-Charge of Agia Police Station, *inter alia*, alleging that on 14.07.2023 at about 7.00 PM, the accused Nos. 3, 4 and 6 in the FIR attacked the son of the first informant with bamboo sticks and caused serious injuries to him. Later on, the son of the first informant was admitted to Goalpara Civil Hospital where he succumbed to his injuries.

4. Learned counsel for the petitioners has submitted that the petitioners are no way involved in the offence alleged against them in the FIR. It is also submitted that the accused No. 1, namely, Shahjahan Ali who attacked the son of the first informant with a bamboo stick. It is further submitted that the petitioners are resident of different villages and they have been falsely implicated in the instant case.

5. On the other hand, learned Additional Public Prosecutor has produced the case diary of Agia PS Case No. 111/2023 and has submitted that though the main accused in this case against whom the allegation of assaulting the deceased are there in the case diary are Shahjahan Ali and Shajamal Ali. However, the present petitioners were also involved in instigating and abetting the main accused to assault the deceased person. Hence, he has opposed the grant of bail to the present petitioners.

6. I have perused the case diary of Agia PS Case No. 111/2023 and have

considered the submissions made by learned counsel for both the parties.

7. It appears from the case diary that there are incriminating materials against the present petitioner No. 1, namely, *Kashem Ali Mondal @ Kashem Mondal* and considering the nature of offences involved in this case, this Court is not inclined to grant benefit of issuing a favourable order under Section 438 of the Code of Criminal Procedure, 1973 against the said petitioner.

8. However, as regards the petitioner No. 2, namely, *Abdul Jalil* is concerned, considering the materials in the case diary, he is directed to appear before the Investigating Officer of Agia PS Case No. 111/2023 within a period of ten days from the date of this order. If he does so, within the stipulated period of time, in the event of his arrest, in connection with Agia PS Case No. 111/2023, he shall be allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand) only with one surety of like amount to the satisfaction of Arresting Authority, subject to the condition that:-

1. That the petitioner shall cooperate with the Investigating Officer of Agia PS Case No. 111/2023 for fair completion of investigation;
2. That the petitioner 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 before the Investigating Officer.

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

JUDGE

Comparing Assistant