

GAHC010190742023



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

Case No. : AB/2976/2023

ABDUL SAMAT SHEIKH @ ABDUS SAMAD AND 3 ORS.
S/O ABDUL BADSHA @ BADSHA SK,
VILL.- JHELTURCHAR, PT- I,
P.O.- KAZAIKATA, P.S.- BILASIPARA, DIST.- DHUBRI, ASSAM, PIN- 783348.

2: ABDUL BADSHA @ BADSHA SK
S/O LT. SUKKUR ALI SK
VILL.- JHELTURCHAR
PT- I
P.O.- KAZAIKATA
P.S.- BILASIPARA
DIST.- DHUBRI
ASSAM
PIN- 783348.

3: FAJIRAN NESSA @ FOJIRON BIBI
W/O ABDUL SAMAT SHEIKH @ ABDUS SAMAD
VILL.- JHELTURCHAR
PT- I
P.O.- KAZAIKATA
P.S.- BILASIPARA
DIST.- DHUBRI
ASSAM
PIN- 783348.

4: ABDUS SUBUIR @ SUBUR ALI
S/O BISHA SHEIKH @ BICHA SK
VILL.- JHELTURCHAR
PT- I
P.O.- KAZAIKATA
P.S.- BILASIPARA
DIST.- DHUBRI
ASSAM
PIN- 783348

VERSUS

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

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

O R D E R

27.09.2023.

Heard Mr. A. Alim Sk, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Addl. P.P., Assam for the State respondent and Mr. M. Hussain, learned counsel appearing for the informant.

This application under Section 438 of the Code of Criminal Procedure, 1973, has been filed by four numbers of the petitioners, namely, (1) Abdul Samat Sheikh @ Abdus Samad, (2) Abdul Badsha @ Badsha Sk, (3) Fajiran Nessa @ Fojiron Bibi and (4) Abdus Subur @ Subur Ali, who are apprehending arrest in connection with Bilasipara P.S. Case No.291/2023, under Sections 498A/307/325/34 of the Indian Penal Code, for granting pre-arrest bail.

The gist of accusation against the present petitioners is that on 11.08.2023, informant Afruza Khatun lodged an FIR before the Officer-in-Charge of the Bilasipara Police Station, inter alia, alleging that she was married to the accused No.1 named in the FIR (petitioner No.1 in the instant case) about two years prior to lodging of the FIR and after the marriage, the accused No.1 started

subjecting her to torture on the advice of the other accused persons. It is also alleged in the FIR that on 07.08.2023, at about 7:00 A.M., the accused No.1 assaulted the informant with a piece of wood on her leg causing fracture to her leg and also attempted to kill her. On receipt of the said FIR, the Bilasipara P.S. Case No.291/2023 was registered.

Learned counsel for the petitioners submits that the petitioners No.2, 3 & 4 live separately from the residence of the victim who is the wife of the petitioner No.1 herein. It is also submitted by the learned counsel for the petitioners that the petitioners are innocent and they may be allowed to go on bail by imposing any condition, considered by this Court.

On the other hand, the learned Addl. Public Prosecutor produced the case diary of Bilasipara P.S. Case No.291/2023 and has opposed the grant of bail to the petitioners on the ground that there are incriminating materials against the present petitioners and it also appears that the victim has sustained fracture injuries on her leg.

Learned counsel for the informant has also vehemently opposed the grant of bail to the petitioners on the ground that the petitioner No.1 had subjected the informant to cruelty and has caused fracture of her leg, on the advice of other petitioners.

I have considered the submission made by learned counsel for the parties as well as perused the materials available on the record including the Case Diary of Bilasipara P.S. Case No.291/2023.

As regards the accused No.1 Abdul Samat Sheikh @ Abdus Samad is concerned, there are sufficient incriminating materials against him in the case diary which does not justify issuance of favourable order under Section 438 of the Code of

Criminal Procedure, 1973.

However, as regards the other three petitioners, considering the materials available in the case diary, their custodial detention does not appear to be necessary for fair completion of the investigation of Bilasipara P.S. Case No.291/2023. Hence, the other three petitioners, namely, petitioners No.(2) Abdul Badsha @ Badsha Sk, (3) Fajiran Nessa @ Fojiron Bibi and (4) Abdus Subur @ Subur Ali are hereby directed to appear before the Investigating Officer of Bilasipara P.S. Case No.291/2023, within a period of ten (10) days from the date of this order and if they do so within the stipulated period of time, in the event of their arrest in connection with Bilasipara P.S. Case No.291/2023, they shall be allowed to go on bail of Rs.30,000/- (Rupees thirty thousands) only with one surety of like amount, for each of them, subject to satisfaction of the arresting authority, subject to the condition that they shall cooperate with the investigation of the case.

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

Send back the case diary immediately.

JUDGE

Comparing Assistant