

GAHC010193852023



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

Case No. : Bail Appln./3057/2023

SHAHJAHAN ALI AND ANR
S/O LATE NABU SEKH
R/O UTTAR JORSHIMULU
P.S. CHHAYGAON
DIST. KAMRUP, ASSAM
MOB. NO. 98640 27090
PIN NO. 781137

2: ANOWARA BEGUM
W/O SHAHJAHAN ALI
R/O UTTAR JORSHIMULU
P.S. CHHAYGAON
DIST. KAMRUP
ASSAM
MOB. NO. 98640 27090
PIN NO. 78113

VERSUS

THE STATE OF ASSAM
REP. BY THE LD. PP, ASSAM

Advocate for the Petitioner : MR A K AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 29.09.2023

Heard Mr. A. K. Ahmed, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.

This bail application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *1. Shahjahan Ali and 2. Anowara Begum* who are detained behind the bar since 05.08.2023 (since last 45 days) in connection with Boko P.S. Case No. 536/2022 under Section 302 of IPC.

The accusation in this case is that on 11.11.2022, one Akher Ali, lodged an FIR before the In-Charge of Sontoli Police Out Post, *inter alia*, alleging that on 03.11.2022, his nephew, namely, Jahirul Islam was found dead on Bouskata PWD Road Bridge with the injury on his leg and a pulsar bike was also found nearby and it was also suspected that he was killed by unknown culprits. On receipt of the said FIR, Boko P.S. Case No. 536/2022 was registered.

The learned counsel for the petitioners has submitted that the present petitioners who are the husband and wife are in no way involved in the offence mentioned in the FIR. It is also submitted that the present petitioners are detained behind the bar since 45 days and considering the period of detention they should be allowed to go on bail.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Boko P.S. Case No. 536/2022 and has submitted that on perusal of the case diary, it appears that the cause of death of the deceased was coma as a result of head injury. It is also submitted by learned Additional Public Prosecutor that from the statement of witnesses recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure, 1973, it appears that the deceased used to consume drugs in the house of the present petitioner and thereafter he was riding pillion on a motorbike with the main accused, namely, Mojibor Kazi and he fell down from the said motorbike. It is also submitted by learned Additional Public Prosecutor submits that the investigation of this case is still going on.

I have considered the submissions made by learned counsel for both sides and perused the materials available on record including the case diary of Boko P.S. Case No. 536/2022.

Considering the material available in the case diary at this stage and also considering the period of detention already undergone by the present petitioners, their further custodial detention does not appear to be necessary for fair completion of the investigation of the case.

In view of the above, the present petitioners, namely, *1. Shahjahan Ali and 2. Anowara Begum* is allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand) only each with one surety of like amount to the satisfaction of learned Chief Judicial Magistrate, Kamrup, Amingaon, subject to the condition that:-

1. That the petitioners 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 to the Investigating Officer;
2. That the petitioners shall cooperate with the Investigating Officer.

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

JUDGE

Comparing Assistant