

GAHC010189512023



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

Case No. : AB/3046/2023

ABDUL MATLIB LASKAR AND 8 ORS
S/O LATE SOYED ALI LASKAR
VILL- BORBOND PART-II
P.S. AND DIST. HAILAKANDI
ASSAM

2: ABDUL KUDDUS LASKAR @ ABDUL KUDDUS ALI LASKAR
S/O LATE TOYUB ALI LASKAR
VILL- BORBOND PART-II
P.S. AND DIST. HAILAKANDI
ASSAM

3: SAKAT ALI LASKAR
S/O LATE SOYED ALI LASKAR
VILL- BORBOND PART-II
P.S. AND DIST. HAILAKANDI
ASSAM

4: RAHMAT ALI LASKAR
S/O LATE SOYED ALI LASKAR
VILL- BORBOND PART-II
P.S. AND DIST. HAILAKANDI
ASSAM

5: ABDUR RAHMAN LASKAR
S/O LATE SOYED ALI LASKAR
VILL- BORBOND PART-II
P.S. AND DIST. HAILAKANDI
ASSAM

6: ACHIYA BEGUM LASKAR
D/O LATE SOYED ALI LASKAR
VILL- BORBOND PART-II
P.S. AND DIST. HAILAKANDI

ASSAM

7: HAIDOR ALI LASKAR @ ALI HAIDOR LASKAR
S/O ABDUL KUDDUS LASKAR
VILL- BORBOND PART-II
P.S. AND DIST. HAILAKANDI
ASSAM

8: KAMLARUN NESSA LASKAR
D/O ABDUL KUDDUS LASKAR
VILL- BORBOND PART-II
P.S. AND DIST. HAILAKANDI
ASSAM

9: MUHIBUR RAHMAN LASKAR @ MOYBUL
S/O LATE JUNAB ALI LASKAR
VILL- BORBOND PART-II
P.S. AND DIST. HAILAKANDI
ASSAM
VERSUS

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

Advocate for : MR. M H RAJBARBHUIYAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 04/10/2023

Heard Mr. M. H. Rajbarbhuiyan, learned counsel for the petitioners. Also heard Mr. K. Baishya, learned Additional Public Prosecutor appearing for the State of Assam as well as Ms. S. R. Mazarbhuiya, learned counsel for the informant.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioners namely, 1. *Abdul Matlib Laskar*, 2. *Abdul*

Kuddus Laskar @ Abdul Kuddus Ali Laskar, 3. Sakat Ali Laskar, 4. Rahmat Ali Laskar, 5. Abdur Rahman Laskar, 6. Achiya Begum Laskar, 7. Haidor Ali Laskar @ Ali Haidor Laskar, 8. Kamlarun Nessa Laskar, 9. Muhibur Rahman Laskar @ Moybul who are apprehending their arrest in connection with Hailakandi P.S. Case No. 109/2023 under Section 147/148/149/447/427/325/326/354/379 of the Indian Penal Code.

The gist of accusation in this case, in brief, is that on 26th May 2023, one Ahmed Hussain Barbhuiya lodged an FIR before the Officer-in-Charge of Hailakandi Police Station, *inter alia* alleging that the accused persons named in the FIR numbering about 24, including the present petitioners are the neighbours of the first informant and they have land dispute amongst them since long time. It is alleged that on 21.05.2023, at about 6 PM, the accused persons named in the FIR, criminally trespassed into the house of the first informant, armed with dao, lathi etc., and damaged the house, fencing and paddy of the first informant. It is also alleged that when the brother and mother of one Farhana Begum Barbhuiya raised objections against the trespassing by the accused persons, they assaulted them. It is also alleged in the FIR that the mother of the first informant sustained serious injuries on the hand and back of her body and the wife of the first informant, who was pregnant at that time, was also assaulted which resulted in miscarriage of her pregnancy.

It is also alleged that the accused person also committed theft of some articles from the house of the first informant and also tried to assault local people who came to rescue of the first informant and his family members. On receipt of the said FIR, Hailakandi P.S. Case No. 109/2023 was registered.

The learned counsel for the petitioners has submitted that as there was a

long standing land dispute between the parties which is not denied any of the parties and there was an altercation between both the parties on the said date and during that altercation both the sides sustained some minor injuries. However, none of the parties sustained any grievous injuries as alleged in the FIR.

It is also submitted by learned counsel for the petitioners that thereafter a proceeding under Section 107 of the Code of Criminal Procedure, 1973 has been drawn up by the Executive Magistrate, Hailakandi, on a complaint, which was lodged by the first informant of this case, wherein notices have been issued to the second party including the present petitioners to show cause as to why they should not be asked to execute a bond for keeping good behaviour and maintaining peace and tranquility in the locality and with the first party. It is also submitted by the learned counsel for the petitioners that the petitioners are ready to cooperate in the investigation and also ready to execute the bond and maintain peace and it is further submitted that the dispute between parties is actually civil in nature and by lodging the present FIR, an attempt has been made to give colour of criminal case to the same.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Hailakandi P.S. Case No. 109/2023 which was called for in connection with this case and has submitted that there are incriminating materials in the case diary against the present petitioners. However, it is also submitted that the Investigating Officer has already recorded the statement of relevant witnesses.

On the other hand, learned counsel for the informant has also opposed the grant of anticipatory bail to the present petitioners on the ground that they

were involved in assault to the informant and his family members including his wife Farhana Begum Barbhuiya and due to the said assault the wife of the petitioner also suffered miscarriage.

I have considered rival submissions made by learned counsel for both parties and have perused the materials on record including the case diary of Hailakandi P.S. Case No. 109/2023.

The materials on record suggest that there is a long standing land dispute between the parties and whereas litigations are pending between them including a recently initiated proceeding under Section 107 of the Code of Criminal Procedure, 1973. It also appears that some of the victims on both sides received simple injuries, therefore, the fact of an altercation on the said date cannot be ruled out. However, it also appears that the investigation has fairly progressed in this case and the Investigating Officer has recorded the statement of the relevant witnesses in this case.

In view of the above facts, this court is of considered opinion that, if the petitioners cooperate in the investigation, their custodial detention may not be necessary for fair completion of the investigation. Hence, the petitioners, namely, 1. *Abdul Matlib Laskar*, 2. *Abdul Kuddus Laskar @ Abdul Kuddus Ali Laskar*, 3. *Sakat Ali Laskar*, 4. *Rahmat Ali Laskar*, 5. *Abdur Rahman Laskar*, 6. *Achiya Begum Laskar*, 7. *Haidor Ali Laskar @ Ali Haidor Laskar*, 8. *Kamlarun Nessa Laskar*, 9. *Muhibur Rahman Laskar @ Moybul* are directed to appear before the Investigating Officer of Hailakandi P.S. Case No. 109/2023 within a period of 10(ten) days from the date of this order and cooperate in investigation. If they do so, within the stipulated period of time, they shall be allowed to go on bail of Rs 30,000/- (Rupees Thirty Thousand) each with one

surety of like amount to the satisfaction of arresting authority subject to the condition that:-

1. The above named petitioners shall not make any inducement, threat or promise to the victims or any persons who are acquainted with the facts of this case so as to dissuade such persons from disclosing such facts to the Investigating Officer.
2. The above named petitioners shall appear before the Investigating Officer of Hailakandi P.S. Case No. 109/2023 once in every week for next four weeks or till the investigation is complete, whichever is earlier, and cooperate with the Investigating Officer.
3. The above named petitioners shall not leave the jurisdiction of the Hailakandi district without intimating the Investigating Officer of Hailakandi P.S. Case No. 109/2023 during the pendency of the investigation.

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

Send back the case diary.

JUDGE

Comparing Assistant