

GAHC010201752023



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

Case No. : AB/3120/2023

WAKIB ALI @ AKIB ALI AND ANR
S/O LATE SURFIZ ALI
VILL- NATANPUR, P.O. AND P.S. KALIAN, DIST. CACHAR, ASSAM

2: JOYRL HOQUE @ JOYRUL ISLAM
S/O WAKIB ALI @ AKIB ALI
VILL- NATANPUR
P.O. AND P.S. KALIAN
DIST. CACHAR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

04.10.2023

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioners. Also heard

Mr. K. Baishya, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, (1) Wakib Ali@ Akib Ali and (2) Joyrl Hoque @ Joyrul Islam, who are apprehending their arrest in connection with Kalain P.S. Case No. 214/2023 under Sections 147/366/341/328/307 of the Indian Penal Code, wherein, Section 120B/302 of the Indian Penal Code were added.

The gist of accusation in this case is that on 10.05.2023, one Kabil Hussain lodged an FIR before the Officer-In-Charge of Kalain Police Station naming seven accused persons, *inter-alia*, alleging that on 09.05.2023 at about 9:00 PM, the accused persons named in the FIR kidnapped the sister of the informant and detained her in their house and later on, she was assaulted and she was administered poison mixed with milk as a result of which she sustained injuries and later on, she was rescued and brought to Kalain, F.R.U. and from there she was also taken to Silchar Medical College and Hospital.

On receipt of the FIR, Kalain P.S. Case No. 214/2023 has been registered. Later on, again on 11.05.2023, one Askar Ali, lodged another FIR before the Officer-In-Charge of Kalain police station, this time mentioning the names of 11 accused persons in the FIR including the present petitioners wherein, the facts which were already narrated in the FIR dated 10.05.2023 were again narrated. However, the fact of death of the sister of the first informant of the first FIR has been additionally mentioned in the FIR dated 11.05.2023. On receipt of the second FIR, the Officer-In-Charge of Kalain police station made a G.D. Entry No. 213 dated 11.05.2023 and tagged the same along with the Kalain P.S. Case No. 214/2023 as the facts narrated in the second FIR were identical to the first FIR

and as the said P.S. case has already been registered earlier on the basis of the first FIR.

Learned counsel for the petitioners has submitted that prior to lodging of the FIR dated 10.05.2023 on the basis of which Kalain Police Station Case No. 214/2023 has been registered, one Bhaskar Ali had lodged an FIR against one Anwar Uddin alleging therein that his daughter was kidnapped by the said Anwar Uddin and he committed rape on her.

Learned counsel for the petitioners has also submitted that the present petitioners are no way involved in the allegations levelled against them in the last FIR lodged by Askar Ali on 11.05.2023.

It is also submitted by learned counsel for the petitioner that as the present petitioners have scolded the father of the deceased that he was unable to keep her daughter under control, the father of the deceased had named him in the FIR which was lodged on 11.05.2023.

Learned counsel for the petitioners has also submitted that the present petitioners are permanent resident of Natanpur and they are ready to co-operate with the Investigating Officer.

On the learned Additional Public Prosecutor has placed the case diary of Kalain P.S.Case No. 214/2023 and has submitted that though there is no direct allegation against the present petitioners in the case diary except the statement made by the Askar Ali, i.e. the informant of the last FIR, i.e. 11.05.2023.

It is also submitted that before the death of the deceased, i.e. the daughter of Askar Ali, her statement was recorded by the Investigating Officer and in her statement she has specifically implicated some of the accused persons, however, the present petitioners names were not mentioned by the deceased.

Considering the fact that no direct incriminating materials against the present petitioners is available in the case diary at this stage, hence, this Court is of the considered opinion that their custodial detention may not be necessary for fair completion of the investigation, if they co-operate with the Investigating Officer.

In view of above, the abovenamed petitioners, are hereby directed to appear before the Investigating Officer of Kalain Police Station Case No. 214/2023 within a period of 10(ten) days from the date of this order and co-operate in the investigation. If they do so within the stipulated period of time, in the event of their arrest in connection with Kalain PS Case No. 214/2023, they shall be allowed to go on bail of Rs. 30,000/-each with a suitable surety of like amount to the satisfaction of the arresting authority subject to the following conditions that:-

(i) they shall not directly or indirectly make any inducement, threat or promise to the first informant of the case or to any person who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer; and

(ii) they shall co-operate with the Investigating Officer.

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

Send back the case diary.

JUDGE

Comparing Assistant