

GAHC010204362023



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

Case No. : AB/3165/2023

HUSSAIN AHMED AND ANR
S/O- LT. ABDUL KARIM, R/O- VILL. SHERALIPUR, P.O. LAMAJUAR, P.S.
BADARPUR, DIST.- KARIMGANJ, ASSAM

2: RASHID AHMED
S/O- MAHABBAT ALI
R/O- VILL. SHERALIPUR
P.O. LAMAJUAR
P.S. BADARPUR
DIST.- KARIMGANJ
ASSA

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

05-10-2023

Heard Mr. Azad Ahmed, learned counsel for the petitioners. Also heard Mr. B B Gogoi, learned Additional Public Prosecutor, Assam for the State.

2. By this application under Section 438 CrPC, the petitioners, namely, (i) **Hussain Ahmed**, Son of Late Abdul Karim and (ii) **Rashid Ahmed**, Son of Mahabbat Ali; both resident of village-Sheralipur, Lamajuar under Badarpur Police Station of district-Karimganj have prayed for their pre arrest bail in P.R.C. Case No. 972/2023 arising out of Badarpur Police Station Case No. 106/2023 registered under Sections 304/506/34 of the IPC with added Sections 120(B)/302 IPC, wherein Charge-Sheet has already been filed on 12.07.2023 vide Charge-Sheet No. 109/2023.

3. The petitioners earlier approached this Court in AB No. 1512/2023 seeking pre-arrest bail in said Badarpur Police Station Case No. 106/2023 corresponding to G.R. No. 883/2023 and initially on 02.05.2023 they were granted interim bail in the said Badarpur P.S. Case.

4. Later, on perusal of the Case Diary, the Court by order dated 28.06.2023 rejected their pre-arrest bail in said Badarpur P.S. Case No. 106/2023 and recalled the interim bail granted to them on 02.05.2023 in the said Badarpur P.S. Case.

5. From the Charge-Sheet filed in said Badarpur P.S. Case, it is seen that in the same, both the petitioners herein have been shown as absconding accused and that the Charge-Sheet has also been filed against both of them with regard to their involvement in the alleged crime.

6. Earlier while rejecting the pre-arrest bail of the petitioners on 28.06.2023 in AB No. 1512/2023, the Court observed that the Case Diary revealed about another Badarpur P.S. Case No. 19/2009, wherein the petitioner No. 1, namely, Hussain Ahmed was a charge-sheeted accused.

7. Mr. Azad, learned counsel appearing for the petitioners placed before the Court the copy of the judgment dated 11.10.2018 passed by the learned Additional Sessions Judge (First Track Court) in Sessions Case No. 100/2015 arising out of said Badarpur P.S. Case No. 19/2009, in which the learned Trial Judge acquitted the said petitioner No. 1, as the prosecution failed to prove the offences against him beyond all

reasonable doubts.

8. On behalf of the petitioners, Mr. Azad, learned counsel placed the copy of the order dated 28.07.2023 passed by a Co-Ordinate Bench of this Court in AB No. 2600/2023, cited the decision reported in *2010 (6) GLR 464 (Budhua Baruah -Vs- State of Assam)* and the decision of the Hon'ble Apex Court in the case of *State of Madhya Pradesh -Vs- Pradeep Sharma*, reported in *(2014) 2 SCC 171*.

9. From the Charge-Sheet of the case, it is seen that the concerned driver of the vehicle involved in the case, namely, Ahmed Ali @ Hassan, Son of Late Abdul Karim and brother of the petitioner No. 1 was arrested during the investigation of the case, was later released on bail by a Co-Ordinate Bench of this Court on 07.08.2023 in Bail Application No. 2239/2023.

10. As per the Charge-Sheet of the case, the present two petitioners and said Ahmed Ali @ Hassan threatened the victim who was an active Village Defense Party member of the locality who used to inform the police about the illegal works in their locality.

11. As per the statements of the eye witness recorded by the police under Section 161 as well as under Section 164 CrPC, the concerned accused driver of the offending Tata Indigo Car, Ahmed Ali @ Hassan, stopped the said car and paused for few minutes about 200 Meters away from the place of occurrence and thereafter the said driver drove his said vehicle in a very high speed and intentionally hit the bike on which the victim was sitting, that was parked about 4 feet away from the side of the road in front of a shop and then fled from the place of occurrence.

12. After few minutes, the petitioner No. 1, Hussain Ahmed, came in a vehicle driven by him and fled away by taking his brother, the said accused Ahmed Ali @ Hassan. The said arrested accused, Ahmed Ali @ Hassan while fleeing away from the place of occurrence left his mobile there that was seized by the police and from the analysis of the Call Data Report of the said seized mobile police could come to know

that said accused Ahmed Ali @ Hassan had talked with the petitioner No. 1, Hussain Ahmed 8 minutes before the incident who was very near to the place of occurrence and under the same tower location during the time of the incident.

13. These materials are available in the Charge-Sheet as well as in the Case Diary of the case.

14. Considered the judgments cited by Mr. Azad, learned counsel for the petitioners.

15. Said G.R. No. 883/2023 arising out of Badarpur Police Station Case No. 106/2023 is presently pending before the Judicial Magistrate First Class (II), Karimganj who is yet to commit the case to the Court of learned Sessions Judge, Karimganj as the Sections involves 302 IPC.

16. Case Diary also reveals that on obtaining interim bail earlier on 02.05.2023 in AB No. 1512/2023 relating to said Badarpur Police Station Case No. 106/2023, the petitioners appeared before the concerned Investigating Officer of the case, which was later recalled by order dated 28.06.2023, noted above.

17. The Court as on date has not proclaimed the petitioners as absconders in said Badarpur P.S. Case No. 106/2023 and in the Charge-Sheet, the I.O. of the case indicated them to be absconding accused.

18. After considering entire aspect of the matter and hearing the parties, the petitioners, named above, i.e., (i) **Hussain Ahmed** and (ii) **Rashid Ahmed** are directed to appear before the Judicial Magistrate First Class (II), Karimganj in said G.R. No. 883/2023 arising out of Badarpur Police Station Case No. 106/2023 **on or before 16.10.2023 during the office hours.**

19. In the event of their such presence before the Judicial Magistrate First Class (II), Karimganj in said G.R. No. 883/2023, as directed above, the said Court shall allow the petitioners namely, (i) **Hussain Ahmed** and (ii) **Rashid Ahmed** to go on bail on furnishing a bail bond of Rs. 30,000/- each with one suitable surety of the like amount

each to the satisfaction of the said Magistrate subject to the conditions that the petitioners **(i)** shall not leave the territorial jurisdiction of the Chief Judicial Magistrate, Karimganj, without obtaining prior written permission from the said authority; **(ii)** shall appear and co-operate in the trial of the said Badarpur P.S. Case No. 106/2023 when the trial of the said case begins and **(iii)** 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/her from disclosing such facts to the Court or to any police officer.

20. Any violation of the aforesaid terms and conditions by the petitioners, named above, the pre arrest bail granted to them in said Badarpur Police Station Case No. 106/2023 corresponding to aforementioned G.R. No. 883/2023 shall stand automatically vacated.

21. With the above observation and direction, this pre-arrest bail application stands allowed to the extent above.

JUDGE

Comparing Assistant