

GAHC010205982023



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

Case No. : Bail Appln./3248/2023

KSHAMADHAR KUMAR AND 9 ORS.
S/O S/O LATE NANDA RAM KUMAR
R/O VILL- PADMAJHAR
P.S. SIPAJHAR
DIST. DARRANG, ASSAM

2: SRI JANMIJAY KALITA
S/O LATE CHANDI RAM KALITA
R/O VILL- PADMAJHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM

3: SRI UMESH KALITA
S/O LATE MANIK KALITA
R/O VILL- TENGHERA
P.S. SIPAJHAR
DIST. DARRANG
ASSAM

4: SRI RAJANI KUMAR
S/O LATE DADHI RAM KUMAR
R/O VILL- PADMAJHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM

5: SRI JADU RAM KALITA
S/O LATE THANESWAR KALITA
R/O VILL- BAGACHOLA
P.S. SIPAJHAR
DIST. DARRANG
ASSAM

6: SRI KAILASH KALITA
S/O LATE HARA KANTA KALITA
R/O VILL- PADMAJHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM

7: SRI MRIDUL KALITA
S/O SRI JANMIJAY KALITA
R/O VILL- PADMAJHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM

8: SRI KASHYAP KALITA
S/O TAPESWAR KALITA
R/O VILL- PADMAJHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM

9: SRI MANTU KALITA
S/O KHEMADHAR KALITA
R/O VILL- PACHIM BOGACHOLA

P.S. SIPAJHAR
DIST. DARRANG
ASSAM

10: SRI PALLAB KALITA
S/O SRI BIREN KALITA
R/O VILL- PADMAJHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

29.09.2023

Heard Mr. B.K. Mahajan, learned counsel for the petitioners. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam.

This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by 10(ten) numbers of petitioners, namely, (1) Kshamadhar Kumar, (2) Sri Janmijay Kalita, (3) Sri Umesh Kalita, (4) Sri Rajani Kumar, (5) Sri Jadu Ram Kalita, (6) Sri Kailash Kalita, (7) Sri Mridul Kalita, (8) Sri Kashyap Kalita, (9) Sri Mantu Kalita and (10) Sri Pallab Kalita, who have been detained behind the bars since 18.08.2023(since last 43 days) in connection with Sipajhar Case No. 296/2023 under Sections 147/148/149/302 of the Indian Penal Code.

The gist of accusation in this case is that on 17.08.2023, one Md. Fiznur Ali lodged an FIR before the Officer-In-Charge of Sipajhar Police Station, *inter-alia*, alleging that his nephew, namely, Majibul Haque, who was working in a company at Guwahati was killed by some villagers of Padmajhar, Tengera, Bagachala under Burha Police Out post after confining him and assaulted him on an alleged complaint of a theft of a goat.

On receipt of the said FIR, Sipajhar P.S. Case No. 296/2023 was registered.

Mr. B.K. Mahajan, learned counsel for the petitioners has submitted that it is a case where a thief was apprehended by villagers thereafter, he was

assaulted by public as a result of which, the thief succumbed of his injuries.

However, learned counsel for the petitioners also submits that though the present petitioners reached the place of occurrence after hearing hue and cry, however, they were not involved in the act of assault on the deceased person. He has also pointed to this Court the endorsement made by the Investigating Officer in the forwarding report addressed to the learned Chief Judicial Magistrate, Darrang on 18.08.2023, wherein, it is mentioned that the local people showed ignorance about the persons who inflicted the injuries on the deceased Majibul Haque.

Learned counsel for the petitioners has also submitted that otherwise also, the petitioners have already been detained behind the bars for last 43 days which may be regarded as sufficient period for progress of the investigation.

On the other hand, Mr. R.J. Baruah, learned Additional Public Prosecutor, has placed the case diary of Sipajhar P.S. Case No. 296/2023, which was called for in connection with the instant case. He has submitted that there are incriminating materials against the present petitioners and has opposed the grant of bail to the present petitioners.

I have considered the rival submissions made by learned counsel for the parties as well as gone through the materials available in the case diary.

On perusal of the case diary, it appears that some of the witnesses who claim to be eye-witnesses have stated before the Investigating Officer that the deceased person was assaulted by more than 150 people who gathered there and the present petitioners were seen amongst those 150 people. However, none of the witnesses, whose statements have been recorded, have specifically mentioned as to which petitioners have inflicted what kind of injury on the deceased. When a person is inflicted injuries by a persons who are members of

a mob atleast their ought to have been some evidence specifically implicating some of the members of the said group as to who have inflicted injuries to the deceased in what manner. Merely by stating that the present petitioners were seen in the group of those 150 people who assaulted inflicted injuries on the deceased would not justify their detention at this stage beyond the period which they have already undergone, i.e. 43 days, which in the considered opinion of this Court may be considered as sufficient period even if their custodial detention would have been required.

In view of the materials in the case diary which is available, as of now, this Court is of the considered opinion that further custodial detention of the present petitioners may not be justified for completion of fair investigation of the Sipajhar P.S. Case No. 296/2023.

In view of above, the above named petitioners are hereby allowed to go on bail of Rs. 30,000/- each with a suitable surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Darrang, Mangaldai with following conditions:-

1. they shall not leave the jurisdiction of learned Chief Judicial Magistrate, Darrang without prior leave from the learned Chief Judicial Magistrate, Darrang and an intimation, thereof, to the Investigating Officer, during the pendency of the investigation of the case;

2. they shall not directly or indirectly make any inducement, threat or promise to any person who is acquainted with the facts of the case so as to dissuade such persons from disclosing such facts to the Investigating Officer; and

3. they shall co-operate in the fair completion of the investigation of this case.

With the above observation, this bail application is hereby disposed of.
Let the case diary be sent back.

JUDGE

Comparing Assistant