

GAHC010214212023



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

Case No. : Bail Appln./3409/2023

AYNAL HOQUE AND ANR
S/O- MATUB ALI MOLLA, VILL- AGMONDIA, P.O. MANDIA GAON, P.S.
BARPETA, DIST.- BARPETA, ASSAM, PIN- 781038

2: MOHIBUL KHAN @ MAHIBUL KHAN
S/O- JASHU KHAN
VILL- 3 NO. BATKUCHI
P.S. BARPETA
DIST.- BARPETA
ASSAM
PIN- 78103

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P., ASSAM

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 05.10.2023

Heard Mr. M. U. Mahmud, learned counsel for the petitioners. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State.

This application under Section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioners, namely, *1. Aynal Hoque and 2. Mohibul Khan @ Mahibul Khan*, who are detained behind the bar since 02.08.2023 in connection with Hatigaon P.S. Case No. 249/2023 under Sections 302/34 of the Indian Penal Code.

The gist of accusation against the present petitioners, in brief, is that on 27.07.2023, one Mazida Khatun Ahmed lodged an FIR before the Officer-in-Charge of Hatigaon Police Station, *inter alia*, alleging that on that day at about 4.10 AM, her husband went out on their house towards the Masjid situated at Friends Path for offering prayer at that time some unknown miscreants attacked him from behind with iron rods with sharp weapon resulting in his death on the spot. It is also submitted that the incident was recorded in the CCTV camera footage. On receipt of the said FIR, Hatigaon P.S. Case No. 249/2023 was registered.

The learned counsel for the petitioners submits that the petitioner are in nowhere involved in the offence alleged in the FIR. However, they are languishing behind the bars since last 64 days. It is also submitted that the petitioners were taken on police remand by the Investigating Officer on more than one occasion and on the last occasion while producing the accused person before learned Magistrate after completion of the police remand period, the only grounds for opposing the bail by the Investigating Officer is that the investigation is at early stage and the offender, if enlarged on bail might commit similar offence in future, which according to the learned counsel for the petitioners is not a just ground for opposing the bail of the present petitioners.

Learned counsel for the petitioner has prayed for grant of bail on considering the period of detention of the present petitioners as well as considering the fact that the investigation might have progressed and their

custodial detention may not be necessary.

Learned Additional Public Prosecutor who has placed the case diary of Hatigaon P.S. Case No. 249/2023 and has submitted that the offence alleged in this case has been committed in a gruesome manner and there are sufficient incriminating materials against both the petitioners and there are other accused persons who are yet to be arrested. It is further submitted that the investigation is pending at a very crucial stage and if at this stage the petitioners are released on bail, it might hamper the fair progress of the investigation.

I have considered the rival submissions of learned counsel for both sides and have perused the materials available in the case diary of Hatigaon P.S. Case No. 249/2023.

Considering the nature of the offence involved in this case as well as incriminating materials against the present petitioners as well as the stage at which the investigation of Hatigaon P.S. Case No. 249/2023 is pending, this Court is of the considered opinion that it would not be conducive at this stage of investigation to release the present petitioners. Hence, the prayer for bail is rejected at this stage.

Send back the case diary.

JUDGE

Comparing Assistant