

GAHC010216822022



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

Case No. : AB/3145/2022

JIYARUL HOQUE AND 2 ORS.
S/O FULBAR ALI
VILL- DUMERGURI PT.II
P.S. ABHAYAPURI
DIST. BONGAIGAON, ASSAM

2: NASIMA KHATUN
W/O FULBAR ALI
VILL- DUMERGURI PT.II

P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSAM

3: TAIJUDDIN
S/O NUR MAHMAD
P.S. KACHERIPETI PT.II
P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P RAHMAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 05-01-2023

Heard Mr. P. Rahman, learned counsel for the petitioners and Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioners viz. [1] Jiyarul Hoque, [2] Nasima Khatun and [3] Taijuddin have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Abhayapuri Police Station Case no. 453/2022, registered for offences punishable under Sections 302/34, Indian Penal Code [IPC].

3. One Kasiron Nessa lodged the First Information Report [FIR] before the Officer In-charge, Abhayapuri Police Station on 13.10.2022 alleging *inter alia* that her daughter named Alema Khatun was killed by the husband, Naser Uddin and other family members of the husband on 11.10.2022. According to the informant, she received the news on 12.10.2022 to the effect that her daughter had expired in the house of her son-in-law, Naser Uddin. The informant also suspected involvement of Jiyarul Hoque [petitioner no. 1]; Nasima Khatun [petitioner no. 2]; and Taijuddin [petitioner no. 3] in the suspected murder of the deceased. When she went to the house of her son-in-law, Naser Uddin, she suspected that after murdering her daughter, he [Naser uddin] along with the other accused persons, had kept her hanging. The witnesses whose statements have been recorded under Section 161, CrPC, till date, have not implicated the three petitioners herein in respect of the unnatural

death i.e. the suspected murder of the deceased daughter of the informant. The post-mortem examination on the deceased was carried out on 12.10.2022 but the final opinion regarding the cause of death is kept pending till receipt of the Chemical Analysis Report [Viscera Report] from the Forensic Science Laboratory [FLS], Assam.

4. The instant application was moved on 31.10.2022. On that date, the learned Additional Public Prosecutor was asked to produce the case diary on 15.11.2022. Thereafter, the application was posted on 15.11.2022, 25.11.2022, 09.12.2022 & 19.12.2022 for production of the Chemical Analysis Report [Viscera Report].

5. The learned Additional Public Prosecutor has submitted today that the Chemical Analysis Report [Viscera Report] is yet to be received from the FSL, Assam. Other than the Chemical Analysis Report [Viscera Report], the investigation into the case of death of the deceased has progressed substantially as the statements of all the vital witnesses appear to have been found recorded by the I.O.

6. Having regard to the above fact situation obtaining in the case and the fact that the witnesses have not specifically implicated the three petitioners herein behind the death of the deceased daughter of the informant, this Court is of the considered view that the petitioners have made out a case for extending the benefit of pre-arrest bail under Section 438, CrPC to them. Given the above fact situation, I am of the view that custodial interrogation of the petitioners for the purpose of carrying out further investigation of the case is not necessary and their release on pre-arrest bail, at this stage of investigation, is not unlikely to bring any adverse effect in the further investigation of the case, provided the petitioners continue to extend their assistance and co-operation in the further

investigation of the case.

7. Accordingly, it is provided that in the event of arrest of the petitioners in connection with Abhayapuri Police Station Case no. 453/2022, they shall be released on bail on furnishing a bail bond of Rs. 50,000/- each with one local surety each of the like amount to the satisfaction of the arresting authority, subject to the conditions that :

[i] the petitioners shall appear before the Investigating Officer [I.O.] of the case within 7 [seven] days from today and shall co-operate with the investigation and shall thereafter, make themselves available for interrogation whenever required by the I.O. of the case;

[ii] the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer; and

[iii] the petitioners shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.

The bail petition stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant