

GAHC010222782023



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

Case No. : Bail Appln./3563/2023

SAFIQUL ISLAM AND ANR
S/O LATE JUNU SHIKH, R/O BHALUKDUBI, P.S.-GOALPARA, DIST-
GOALPARA, ASSAM

2: ROKIBUL ISLAM
S/O MD. ROMJAN ALI
R/O BHALUKDUBI
P.S.-GOALPARA
DIST- GOALPARA
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A PARAMANIK

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

20.11.2023

Heard Mr. A. Paramanik, learned counsel for the petitioners. Also heard Mr. S.H. Bora, learned Additional Public Prosecutor, Assam.

This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, (1) Safiqul Islam and (2) Rokibul Islam, who are detained behind the bars since 15.06.2023 (since last 158 days) in connection with Session Case No. 87(S-S)/2023 pending before the Court of learned Sessions Judge, Sivsagar, arising out of Halowating P.S. Case No. 21/2023.

Learned counsel for the petitioners has submitted that the present petitioners are facing trial in Session Case No. 87(S-S)/2023 which was registered after the committal of G.R. Case No. 181/2023 to the said Court, the charge-sheet in the said case has been filed under Section 341/325/323/307/34 of the Indian Penal Code and the entire criminal law was set in motion in this case by filing of an FIR on 15.06.2023 by one Sri Arun Thakur, before the Officer-In-Charge of Halowating Police Station, wherein, it was *inter-alia*, alleged that the present petitioners on 15.06.2023, tease some of the students of Amguri Halowating Mazdur High School, wherein the grandson of the first informant along with some boys interfered and they were assaulted by the present petitioners.

Learned counsel for the petitioners submits that the present petitioners are innocent.

It is also submitted that the petitioners are mason and they went to Sivsagar for their livelihood.

It is further submitted that though the petitioners are detained behind the bars since last 158 days and the case was committed to the Court of Sessions on 14.08.2023, however, charges are yet to be framed.

It is further submitted by learned counsel for the petitioners that there are 28 numbers of listed witnesses in the charge-sheet and there is a likelihood that

the terminal of trial would be a considerable ground and as the petitioners are ready to face trial under any conditions which may be imposed by the Court, there may not be any justification to keep them behind the bars during the pendency of the trial.

On the other hand, learned Additional Public Prosecutor has opposed the grant of bail to the present petitioners on the ground that the charges are yet to be framed and main witnesses are yet to be examined.

It is further submitted by the learned Additional Public Prosecutor that the present petitioners are the permanent resident of Goalpara and the trial is going on in the district of Sivsagar and there is likelihood that it would be difficult to procure their attendance during the pendency of the trial if they are released on bail.

I have considered the submissions made by learned counsel for both the parties and also has perused the scanned copy of the case record of Session Case No. 87(S-S)/2023 which was called for in connection with this case.

It does not appear to be justified to keep the present petitioners behind the bars merely because of the fact that the petitioners are the resident of Goalpara district and the trial is going on in a different district, i.e. Sivsagar, if they otherwise, co-operate in the trial.

It also appears from the record that though the petitioners are detained behind the bars since last 128 days, the trial has not yet commenced and considering the number of prosecution witnesses listed in the said charge-sheet, there is a likelihood that the culmination of trial would take a considerable period of time and therefore, if the petitioners co-operate in the trial, this Court is of the considered opinion that they need not be detained behind the bars during pendency of the trial.

In view of above, both 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 Sessions Judge, Sivsagar with following conditions that:-

(i) both the above-named petitioners shall not directly or indirectly make any inducement threat or promise to any of the listed witnesses of the Session Case No. 87(S-S)/2023 or any other persons who may be acquainted with the facts of the case so as to dissuade such persons from disposing against the petitioners in the pending trial in Session Case No. 87(S-S)/2023;

(ii) both the above-named petitioners shall not leave the jurisdiction of Sivsagar District without prior leave of the learned Trial Court, where the aforementioned trial is pending; and

(iii) the learned Trial Court may impose any additional condition in addition to the condition imposed by this Court if it deems fit to do so.

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

JUDGE

Comparing Assistant