

GAHC010225392023



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

Case No. : AB/3424/2023

HANIFUDDIN AND 6 ORS
S/O LATE HUSSAIN ALI
R/O VILL- PUB KAMARPARA
P.S. KHARUPETIA
DIST. DARRANG, ASSAM

2: SULEMAN ALI
S/O LATE HUSSAIN ALI
R/O VILL- PUB KAMARPARA
P.S. KHARUPETIA
DIST. DARRANG
ASSAM

3: SAH ALI @ SAHA ALI
S/O LATE KASHEM ALI
R/O VILL- PUB KAMARPARA
P.S. KHARUPETIA
DIST. DARRANG
ASSAM

4: JAMAL UDDIN
S/O LATE SAMATULLA
R/O VILL- PUB KAMARPARA
P.S. KHARUPETIA
DIST. DARRANG
ASSAM

5: JAINAL ABDIN
S/O HANIF UDDIN
R/O VILL- PUB KAMARPARA
P.S. KHARUPETIA
DIST. DARRANG
ASSAM

6: BILLAL HUSSAIN
S/O MUSLIM ALI
R/O VILL- 1 NO. PUNIA
P.S. KHARUPETIA
DIST. DARRANG
ASSAM

7: ABU SAYED
S/O MUSLIM ALI
R/O VILL- 1 NO. PUNIA
P.S. KHARUPETIA
DIST. DARRANG
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR M AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 22.11.2023

Heard Mr. M. Ahmed, learned counsel for the petitioners. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the seven nos. of the petitioner, namely, *1. Hanifuddin, 2. Suleman Ali, 3. Sah Ali @ Saha Ali, 4. Jamal Uddin, 5. Jainal Abdin, 6. Billal Hussain and 7. Abu Sayed* who are apprehending their arrest in connection with Kharupetia P.S. Case No. 181/2023 under Sections 148/448/427/325/326/307 of the Indian Penal Code.

The accusation against the present petitioners is that on 14.09.2013, one Sajida Khatun had lodged an FIR before the Officer-in-Charge of Kharupetia Police Station, *inter alia*, alleging that 10(ten) numbers of accused persons named in the FIR including present petitioners have trespassed into the house of the first informant and assaulted the brother of the first informant, namely, Abdul Jalil. It is further alleged that the left hand of the brother of the first informant was attacked with a dagger. It is further alleged that the accused persons named in the FIR assaulted the nephew of the first informant, namely, Sukur Ali and other relatives, namely, Musa Ali, Abbas Ali, Rejjak Ali, Sen Bhanu and others.

Learned counsel for the petitioners has submitted that there was an altercation on 14.09.2023 between the present petitioner and the family members of the informant over a right to way over a plot of land which is claimed to be the petitioner No. 1, namely, Hanifuddin. It is also alleged that in the altercation, both the parties sustained injuries and in this regard the one Mirjina Khatun had lodged an FIR against family members of the first informant of the FIR which has been lodged against the present petitioners.

It is further submitted by learned counsel for the petitioners that, in the meanwhile, the main accused, namely, Saha Alam has already been arrested and he has been released on bail. The learned counsel for the petitioners has submitted that the petitioners ready to cooperate with the Investigating Officer.

On the other hand, Additional Public Prosecutor has produced the case diary of Kharupetia P.S. Case No. 181/2023 and has submitted that from the injury report of the victim, it appears that he sustained grievous injuries caused by sharp weapon. However, from the statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973, it appears that the injuries

on Abdul Jalil was caused by accused Saha Alam, who has been arrested and later on released on bail. Further, learned Additional Public Prosecutor has also submitted that the injuries as regards the other injured person appears to be simple in nature.

Considering the submissions made by learned counsel for both sides and considering the fact that the injuries inflicted sustained by the injured Abdul Jalil was not inflicted by any of the present petitioner but by one another accused, namely, Saha Alam who has already been arrested and also considering the fact that there was an altercation between both the parties and both the parties have filed cross case against each other, as well as the fact that the other victims have only sustained simple injuries, custodial detention of the above named petitioners does not appear to be necessary for fair completion of the investigation of Kharupetia P.S. Case No. 181/2023, if the petitioners cooperate in the investigation with the Investigating Officer.

In view of the above, the petitioners, namely, *1. Hanifuddin, 2. Suleman Ali, 3. Sah Ali @ Saha Ali, 4. Jamal Uddin, 5. Jainal Abdin, 6. Billal Hussain and 7. Abu Sayed* are hereby directed to appear before the Investigating Officer of Kharupetia P.S. Case No. 181/2023 within a period of ten days from the date of this order and shall cooperate in the investigation. If they do so, within the stipulated period of time, in the event of their arrest in connection with Kharupetia P.S. Case No. 181/2023, they shall be allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand only) each with one surety of like amount to the satisfaction of arresting authority, subject to the condition that:-

1. They shall cooperate with the Investigating Officer in the investigation;
2. They shall not directly or indirectly make any inducement,

threat or promise to any persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts to the Investigating Officer.

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

JUDGE

Comparing Assistant