

GAHC010216762023



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

Case No. :

Bail Appln./3607/2023

AFSAR ALI AND 3 ORS
S/O- LT. SOMTULLAH

R/O- VILL.- KURSHA KATI

P.O.- RANIGONJ
P.S.- SAPATGRAM

DISTRICT- DHUBRI
ASSAM
PIN- 783345.

2: HAMIDUL ISLAM
S/O- AFSAR ALI

R/O- VILL.- KURSHA KATI

P.O.- RANIGONJ
P.S.- SAPATGRAM

DISTRICT- DHUBRI
ASSAM
PIN- 783345.

3: RAKHIJUL HOQUE
S/O- AFSAR ALI

R/O- VILL.- KURSHA KATI

P.O.- RANIGONJ
P.S.- SAPATGRAM

DISTRICT- DHUBRI
ASSAM
PIN- 783345.

4: SAHIDA BIBI
W/O- AFSAR ALI

R/O- VILL.- KURSHA KATI

P.O.- RANIGONJ
P.S.- SAPATGRAM

DISTRICT- DHUBRI
ASSAM
PIN- 783345.
VERSUS

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

Advocate for : MR. M U MONDAL
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

06.10.2023

1. Heard Mr. M.U. Mondal, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State.
2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioners namely 1. Afsar Ali (detained since 29.8.23), 2. Hamidul Islam (detained since 23.9.23), 3. Rakhijul Haque

(detained since 23.9.23) and 4. Sahida Bibi (detained since 23.9.23) who are detained behind the bar in connection with Sapatgram PS Case No 68 of 23 u/s 120B/ 457/302 of the Indian Penal Code.

3. The accusation in this case is that on 27-08-2023, one Sirajul Haque lodged an FIR before the In-charge of Rani Ganj Police Outpost under Sapatgram Police Station, *inter-alia*, alleging that on the night of 25-08-2023, 8(eight) numbers of accused persons named in the FIR, including the present Petitioner, illegally trespassed into the house of the elder brother of the first informant, namely Shah Jalal Sheikh, and brutally killed him along with his wife, Narzima Begum, with sharp weapons, and thereafter fled away. On the next day, the family members of the brother of the first informant found the dead bodies of both the deceased persons.

4. Learned counsel for the petitioner has submitted the petitioner No.1 is an old man of 65 years of age and petitioner No.4 is an aged lady of 60 years of age and they are in no way involved in the alleged offence. It is also submitted by the learned counsel for the petitioners that the above-named petitioners have been arrested only because they happen to be the relatives of the main suspect namely Shahidul Islam @ Bhutto, however, there is no material against the present petitioners to justify their detention.

5. Learned counsel for the petitioner has submitted that the name of the above named petitioners have been included in the FIR merely on suspicion as there was no eyewitness to the alleged incident. It is also submitted by learned counsel for the petitioners are detained behind the bar without any material against them regarding their involvement and they have been detained merely on the basis of suspicion and therefore, he has prayed for allowing the abovenamed petitioners to go on bail on any condition which

may be imposed by this court.

6. On the other hand, learned Additional Public Prosecutor has produced the case diary of Sapatgram P.S. Case No. 68/23 which was called for in connection with this case and has submitted that the investigation of this case is at crucial stage and considering the nature of offence involved in this case, he vehemently opposed the grant of bail to the abovenamed petitioners. He has also submitted that two of the main accused who are suspected to have main role in the alleged offence are still absconding and, on that ground, he has opposed the grant of bail to the abovenamed petitioners. It is also submitted by the learned Additional Public Prosecutor that the release of the abovenamed petitioners on bail at this stage would affect the fair investigation and therefore, it is submitted by the learned Additional Public Prosecutor that the bail may not be granted to the abovenamed petitioners.

7. I have considered the rival submissions made by learned counsel for both the sides and have perused the materials on record including the case diary of Sapatgram P.S. Case No. 68/23.

8. On perusal of the case diary, it appears that at this stage of the investigation, there is no direct evidence of the commission of offence alleged in the FIR, by the above named petitioners. Though, the offence involved in this case is very heinous and is a case of gruesome double murder of husband and wife in their own house. However, at this stage of investigation, when the abovenamed petitioners have already undergone detention behind the bars and apart from mere suspicion there is no such material against him in the case diary to justify their further custodial detention for the sake of investigation, the abovenamed petitioners may not

be detained any further merely on the basis of only suspicion, how so ever strong it may be.

9. For the above-mentioned reasons, this Court is of considered opinion that the further custodial detention of the abovenamed petitioners may not be necessary for fair completion of the investigation of this case if they cooperate with the Investigating Officer in the investigation.

10. In view of above, the abovenamed petitioners are hereby directed to be released on bail of Rs 30,000/- each with one surety of like amount to the satisfaction of learned SDJM(S), Bilasipara subject to following condition:-

i. The abovenamed petitioners shall make themselves available for interrogation as and when so required by the Investigating Officer during the pendency of the investigation of Sapatgram P.S. Case No. 68/2023.

ii. The abovenamed petitioners shall not directly or indirectly make any inducement, threat or promise to any person or persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts to the Investigating Officer.

iii. The abovenamed petitioners shall not leave the jurisdiction of Dhubri District without prior leave of SDJM(M), Bilasipara and intimation to the Investigating Officer of Sapatgram P.S. Case No. 68/23 during pendency of the investigation.

11. With above observation, this bail application is hereby disposed of.

JUDGE

Comparing Assistant