

GAHC010228252022



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

Case No. : AB/3331/2022

RAHIM ALI @ ABDUL RAHIM AND 5 ORS.
S/O- LT. HUSSAIN ALI, R/O- PURAGAON, P.O. CHUKRUNGBARI, P.S.
SORBHOG, DIST.- BARPETA, ASSAM, PIN- 781317

2: MOSTAFA ALI @ MUSTAFA ALI
S/O- LT. HUSSAIN ALI
R/O- PURAGAON
P.O. CHUKRUNGBARI
P.S. SORBHOG
DIST.- BARPETA
ASSAM
PIN- 781317

3: MUSLIM UDDIN
S/O- LT. EMAN ALI
R/O- PURAGAON
P.O. CHUKRUNGBARI
P.S. SORBHOG
DIST.- BARPETA
ASSAM
PIN- 781317

4: MUSLIM UDDIN KHA @ MACHLIM UDDIN
S/O- LT. MAHARUDDIN
R/O- PURAGAON
P.O. CHUKRUNGBARI
P.S. SORBHOG
DIST.- BARPETA
ASSAM
PIN- 781317

5: AKKAS ALI
S/O- SAMAD ALI
R/O- PURAGAON

P.O. CHUKRUNGBARI
P.S. SORBHOG
DIST.- BARPETA
ASSAM
PIN- 781317

6: ABBAS ALI
S/O- SAMAD ALI
R/O- PURAGAON
P.O. CHUKRUNGBARI
P.S. SORBHOG
DIST.- BARPETA
ASSAM
PIN- 78131

VERSUS

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

Advocate for the Petitioner : MR. N N JHA

Advocate for the Respondent : PP, ASSAM

B E F O R E

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

03.02.2023

1. Heard Mr. N.N. Jha, learned counsel appearing for the petitioners as well as Mr. M.P. Goswami, learned Addl. P.P. appearing for the State respondent.
2. The petitioners, namely, Rahim Ali, Mostafa Ali @ Mustafa Ali, Muslim Uddin, Muslim Uddin Kha @ Machlim Uddin, Akkas Ali, Abbas Ali have filed this application under Section 438 Cr.P.C with prayer for pre-arrest bail as they are apprehending arrest in connection with PRC Case No. 1061/2022, under Sections 341/324/325/326/34 IPC and added Section 302 IPC arising out of Sorbhog P.S. Case No. 96/2022.

3. It is submitted on behalf of the petitioner that a clash between both the parties erupted and both parties' sustained injuries. It is submitted that the petitioner no. 4, Muslim Uddin Kha @ Machlim Uddin sustained grievous injuries, as a result of the incident. The injury report of the petitioners Muslim Uddin and Abdul Rahim has been annexed marked as Annexure-3 series and tagged along with this petition. As all the petitioners were injured and were undergoing treatment and they were not aware of this case. The charge-sheet was laid against them showing them absconders. It is submitted that the petitioners will co-operate with the trial. The petitioners are not responsible for the death of the victim Majnu Ali who succumbed to injuries as a result of the incident.

4. The learned Addl. P.P. has raised serious objections that there are cogent materials against the petitioners. The statement of the witnesses and the complainant clearly depicts that the petitioners are responsible for the death of the Majnu Ali and grievous injuries of the other injured person. The FIR was lodged on 15.07.2022 and finally charge-sheet has been laid against the petitioners on 13.09.2022.

5. I have given my anxious considerations to the submissions at the Bar.

6. In view of my foregoing discussion, it is held that the import of the section under which the petitioners are booked does not construe them to be entitled to bail. I have also considered the fact that the petitioners are shown as absconders in the charge-sheet. I have considered the magnitude of the offence. Provision under Section 438 Cr.P.C cannot be exercised in an untrammelled manner. They have been evading arrest and they have not co-operated with the investigation.

7. Considering all aspects, at this stage, there appears to be no justified ground to extend the privilege of anticipatory bail.

JUDGE

Comparing Assistant