

GAHC010235682023



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

Case No. : AB/3572/2023

NAZIR HUSSAIN AND 5 ORS
S/O- JEL HOQUE RESIDENT OF VILLAGE BALATARI @ GADHUPARA, P.S-
FAKIRGANJ, DIST- DHUBRI, ASSAM

2: JEL HOQUE MIAH
S/O - LATE KUDDUS KAZI RESIDENT OF VILLAGE BALATARI @
GADHUPARA
P.S- FAKIRGANJ
DIST- DHUBRI
ASSAM

3: JOMIR UDDIN
S/O- JEL HOQUE RESIDENT OF VILLAGE BALATARI @ GADHUPARA
P.S- FAKIRGANJ
DIST- DHUBRI
ASSAM

4: JAHIDUL ISLAM
S/O- JEL HOQUE RESIDENT OF VILLAGE BALATARI @ GADHUPARA
P.S- FAKIRGANJ
DIST- DHUBRI
ASSAM

5: ZAKIR HUSSAIN
S/O - JEL HOQUE RESIDENT OF VILLAGE BALATARI @ GADHUPARA
P.S- FAKIRGANJ
DIST- DHUBRI
ASSAM

6: JOMELA KHATUN
W/O JEL HOQUE RESIDENT OF VILLAGE BALATARI @ GADHUPARA
P.S- FAKIRGANJ
DIST- DHUBRI
ASSA

VERSUS

THE STATE OF ASSAM
(THROUGH PUBLIC PROSECUTOR, ASSAM,)

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

22.11.2023

Heard Mr. H.R.A. Choudhury, learned Senior Counsel, assisted by Mr. M. Hossain, learned counsel for the petitioners. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by 6(six) numbers of petitioners, namely, 1. Nazir Hussain, 2. Jel Hoque Miah, 3. Jomir Uddin, 4. Jahidul Islam, 5. Zakir Hussain, and 6. Jomela Khatun, who are apprehending their arrest in connection with Fakirganj P.S. Case No. 126/2023 under Section 302/34 of the Indian Penal Code.

The gist of accusation against the present petitioners is that on 16.07.2023, one person, namely, Tajmohal has lodged an FIR before the Officer-In-Charge of Fakirganj Police Station, *inter-alia*, alleging that his daughter was married to the accused person No. 1, named in the FIR (petitioner No. 1 in the said case) and on 10.07.2023 at about 11:00 A.M. the informant came to know that his daughter has committed suicide and when the informant reached the

house of the accused persons, he saw the accused persons pouring water on the head of his daughter.

It is alleged in the FIR that the petitioner suspects that the accused persons had assaulted and killed his daughter.

Learned Senior Counsel for the petitioners has submitted that the deceased was the wife of the petitioner No. 1, namely, Nazir Hussain and they have been married for last 3(three) years, but were issueless, and on 10.07.2023, deceased herself committed suicide and after coming to know about the incident the present petitioners tried to recover her to save her and they took her to hospital, where the wife of the petitioner No. 1 was declared dead.

Learned Senior Counsel for the petitioners has submitted that this is a case of suicide without any role of the present petitioners and bare reading of the FIR would reveal that the informant only suspected the petitioners to have killed his daughter.

Learned Senior Counsel for the petitioners has also submitted that in the meanwhile, by order dated, 17.10.2023, the other petitioners, except petitioner No. 1, namely, 2. Jel Hoque Miah, 3. Jomir Uddin, 4. Jahidul Islam, 5. Zakir Hussain, and 6. Jomela Khatun were allowed to go on interim anticipatory bail and in pursuant to the directions of this Court, they have appeared before the Investigating Officer and have co-operated in the investigation.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Fakirganj P.S. Case No. 126/2023 and has submitted that though the post-mortem examination report is available in the case diary, however, the opinion as regards cause of death is kept pending therein and the viscera has been sent for chemical analysis report.

It is also submitted by the learned Additional Public Prosecutor that from the statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973 by the Investigating Officer as well as from the post-mortem report, at the present stage, there is no materials to indicate that the deceased was murdered by the accused persons.

It is also submitted by the learned Additional Public Prosecutor that all other accused persons, except accused No. 1, have appeared before the Investigating Officer and their statement under Section 161 of the Code of Criminal Procedure, 1973 has also been recorded.

Considering the submissions made by the learned counsel by both sides, and after perusing the materials available on record including the case diary and post-mortem examination report of the deceased, at this stage, it appears that this is a case of suicide by the wife of the petitioner No. 1 and it also appears that as the other petitioners who were allowed to go on interim bail have complied with the directions of this Court and have co-operated in the investigation.

Hence, the interim anticipatory bail granted to the petitioner Nos. 2 to 6, namely, 2. Jel Hoque Miah, 3. Jomir Uddin, 4. Jahidul Islam, 5. Zakir Hussain, and 6. Jomela Khatun is hereby made absolute with the condition that they shall continue to co-operate in the investigation.

On the other hand, for the reasons mentioned above, custodial detention of petitioner No. 1, namely, Nazir Hussain does not appear to be necessary for fair completion of the investigation of the Fakirganj P.S. Case No. 126/2023.

Hence, he (Nazir Hussain) is hereby directed to appear before the Investigating Officer of Fakirganj P.S. Case No. 126/2023 within a period of 10(ten) days from the date of this order and co-operate in the investigation. If

he does so, within the stipulated period of time, in the event of their arrest in connection with Fakirganj P.S. Case No. 126/2023, he (Nazir Hussain) shall be allowed to go on interim bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the arresting authority, subject to the condition that he shall co-operate in the investigation.

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

Send back the case diary.

JUDGE

Comparing Assistant