

GAHC010242472022



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

Case No. : AB/3524/2022

ABDUL HAKIM @ HAKIM ALI
S/O ABDUL RAHIM
PERMANENT R/O VILL- KARAGARI NONKE, BLOCK NO. 1,
P.O. GOLIBANDHA
P.S. SARTHEBARI
DIST. BAJALI, ASSAM, PIN-781375
PRESENTLY RESIDING AT BHETAPARA
JYOTI PATH, HOUSE NO. 8, P.S. HATIGAON, DIST. KAMRUP (M),
GUWAHATI.

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. A SAIKIA

Advocate for the Respondent : PP, ASSAM

Linked Case : AB/3526/2022

HASEN ALI @ HASAN ALI AND ANR
S/O ABDUL RAHIM
PERMANENT
R/O VILL- KARAGARI NONKE
BLOCK NO. 1

P.O. GOLIBANDHA
P.S. SARTHEBARI
DIST. BAJALI
ASSAM

PIN-781375
PRESENTLY RESIDING AT NOTBOMA

HATIGAON
JURIPAR PATH
HOUSE NO. 05
P.S. HATIGAON
DIST. KAMRUP (M)
ASSAM
GUWAHATI

2: JESMINA SULTANA @ JASMINA KHATUN
W/O HASEN ALI
PERMANENT
R/O VILL- KARAGARI NONKE
BLOCK NO. 1

P.O. GOLIBANDHA
P.S. SARTHEBARI
DIST. BAJALI
ASSAM

PIN-781375
PRESENTLY RESIDING AT NOTBOMA

HATIGAON
JURIPAR PATH
HOUSE NO. 05
P.S. HATIGAON
DIST. KAMRUP (M)
ASSAM
GUWAHATI
VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. A SAIKIA
Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

19.01.2023

Heard Mr. A. Saikia, learned counsel for the petitioners in A.B. no. 3524/2022 and A.B. no. 3526/2022; Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam; and Mr. R. Ali, learned counsel for the informant.

2. By these two applications under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner in A.B. no. 3524/2022 viz. Abdul Hakim @ Hakim Ali and the petitioners in A.B. no. 3526/2022 viz. [1] Hasen Ali @ Hasan Ali and [2] Jesmina Sultana @ Jasmina Khatun, have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Hatigaon Police Station Case no. 518/2022, registered for the offence of murder, punishable under Section 302, Indian Penal Code [IPC].

3. The First Information Report [FIR] in connection with Hatigaon Police Station Case no. 518/2022 is lodged by the informant, Md. Tamij Ali on 11.11.2022 reporting unnatural death of his daughter, Sumi Begum. As per the FIR, the dead body of the deceased was found in a sitting position on her bed at around 06-30 p.m. in her matrimonial house located at Hatigaon, Guwahati. In the FIR, the informant has arraigned 4 [four] persons as accused viz. [i] Hussain Ali [the husband of the deceased], [ii] Hasan Ali [the brother-in-law of the deceased and the petitioner in A.B. no. 3526/2022], [iii] Hakim Ali [the brother-in-law and the petitioner in A.B. no. 3524/2022] and [iv] Jasmina Khatun [the wife of Hasan Ali and the sister-in-law of the deceased].

4. In the FIR, apart from the husband of the deceased, the informant has also brought allegations against the in-laws of the deceased stating that there were continuous demands of dowry from their ends also. The informant has alleged about physical and mental tortures

upon the deceased by the husband of the deceased though the marriage of the deceased was solemnized 10 years earlier. The informant has made specific reference about a dowry demand of Rs. 20,00,000/- on 06.11.2022 by the husband of the deceased on the pretext of purchasing of a vehicle. There are allegations to the effect that when the informant could not fulfill the said demand, the uncle and the mother of the deceased had to go to the matrimonial house of the deceased in order to hold discussion on different dates preceding the date of death of the deceased, to resolve the same.

5. The learned Additional Public Prosecutor has produced the case diary, which contains a suicide note, claimed to be written by the deceased.

6. I have perused the materials available in the case diary, collected during the course of investigation carried out so far, including the suicide note and have also perused few pages of the diary, claimed to be written and maintained by the deceased. Neither in the pages in the diary nor in the suicide note, the deceased had made any specific allegations against the three petitioners herein. The suicide note was sent for handwriting identification to the Forensic Science Laboratory [FSL], Assam. The Report of the FSL dated 14.12.2022 containing its opinion, is available in the case diary. Upon comparison, it has been opined in the Report in respect of few questioned writings – Q1 to Q3 - that the same were written by the deceased. The post-mortem examination on the dead body was performed at the Gauhati Medical College & Hospital [GMCH] on 12.11.2022. The post-mortem examination report reported few injuries on the person of the deceased.

6.1. The materials in the case diary go to suggest that the three petitioners were not present at the place of occurrence immediately prior to finding the deceased in the hanging position in her matrimonial house. The statement of the husband of the deceased, who was arrested, goes to indicate the there was a fight between the deceased and the husband 2 - 3 days prior to the date of the alleged incident and on that day, he had assaulted the deceased.

7. The learned counsel for the informant has not made any specific submission as regards involvement of the three petitioners herein in the alleged death of the deceased.

8. Having regard to the nature of materials available in the case diary so produced, this Court is of the considered view that the three petitioners herein have made out a *prima facie* case for extending the benefit of pre-arrest bail under Section 438, CrPC.

9. The petitioner no. 2 in A.B. no. 3526/2022 viz. Jesmina Sultana @ Jasmina Khatun was provided interim protection by order dated 21.12.2022 with the further direction to her to appear before the Investigating Officer [I.O.] of the case within 7 [seven] days from 21.12.2022. The said petitioner has already appeared before the I.O. of the case on her such appearance, the I.O. of the case has recorded her statement, which is available in the case diary. Having considered all the aspects, the interim protection granted to the petitioner no. 2 in A.B. no. 3526/2022 viz. Jesmina Sultana @ Jasmina Khatun by order dated 21.12.2022, is made absolute.

10. In so far as the petitioner in A.B. no. 3524/2022 viz. Abdul Hakim @ Hakim Ali and the petitioner no. 1 in A.B. no. 3526/2022 viz. Hasen Ali @ Hasan Ali are concerned, this Court is of the considered view that their custodial interrogation does not appear necessary for the purpose of carrying out further investigation of the case and their release on pre-arrest bail, at this stage of investigation, is unlikely to cause any adverse effect in the further investigation of the case, provided they extend their assistance and co-operation in the further investigation of the case. Accordingly, it is provided that in the event of arrest of the petitioner in A.B. no. 3524/2022 viz. Abdul Hakim @ Hakim Ali and the petitioner no. 1 in A.B. no. 3526/2022 viz. Hasen Ali @ Hasan Ali in connection with Hatigaon Police Station Case no. 518/2022 they shall be released on bail on furnishing a bail bond of Rs. 50,000/- each with one local surety each of the like amount, to the satisfaction of the arresting authority.

11. The benefit of pre-arrest bail granted to the three petitioners are subject to the following conditions :

[i] the petitioners shall appear before the Investigating Officer [I.O.] of the case within 10 [ten] days from today and shall cooperate with the investigation and

shall thereafter, make themselves available as and when their presence are required by the I.O. in the investigation of the case;

[ii] the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any police officer;

[iii] the petitioners shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police; and

[iv] the petitioners shall maintain law and order and they shall not commit an offence similar to the offence of which they are accused, or of the commission of which they are suspected; and

[v] the petitioners shall regularly remain present during the trial and co-operate the Court to complete the trial for the above offences, if charge sheeted in the case.

12. The bail application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant