

GAHC010242882023



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

Case No. : AB/3666/2023

SHANTI BANU AND 5 ORS
W/O MAHAMMAD ALI
R/O VILL- MAZER ALGA
P.S. FAKIRGANJ
DIST. DHUBRI

2: KADER ALI
S/O LATE JHABOXO MOLLAH
R/O VILL- MAZER ALGA
P.S. FAKIRGANJ
DIST. DHUBRI

3: SAGAR ALI
S/O LATE JAHABOXO MOLLAH
R/O VILL- MAZER ALGA
P.S. FAKIRGANJ
DIST. DHUBRI

4: SABAN ALI
S/OLATE JAHABOXO MOLLAH
R/O VILL- MAZER ALGA
P.S. FAKIRGANJ
DIST. DHUBRI

5: ASMA KHATUN
W/O KADER ALI
R/O VILL- MAZER ALGA
P.S. FAKIRGANJ
DIST. DHUBRI

6: JAHIRON BIBI
W/O ABDUL BATEN
R/O VILL- MAZER ALGA
P.S. FAKIRGANJ

DIST. DHUBR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 20.11.2023

Heard Mr. H. R. A. Choudhury, learned senior counsel assisted by Mr. A. R. Ahmed, learned counsel for the petitioners. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State respondent.

This application has been preferred under Section 438 of Code of Criminal Procedure, 1973, by the petitioners, namely, (1) Shanti Banu, (2) Kader Ali, (3) Sagar Ali, (4) Saban Ali, (5) Asma Khatun, and (6) Jahiron Bibi, who are apprehending their arrest in connection with Fakirganj P. S. Case No. 139/2023 registered under Sections 341/326/307/34 of IPC.

The gist of the accusation in this case against the present petitioners is that on 16.08.2023, one Saij Uddin had lodged an FIR before the Officer-in-Charge, Bandihana Police Station, *inter-alia*, alleging that on 14.08.2023 at about 7.00 PM the brother of the first informant Mohammed Ali was called to the house of his second wife by making a call over telephone and when he was going to the said house, four to five numbers of person restrained him and

assaulted him in his private parts causing injuries on his private part. Thereafter, he was taken to the hospital for providing medical treatment.

Learned senior counsel for the petitioners has submitted that prior to lodging of the FIR against the present petitioners the petitioner No. 1 Shanti Banu have instituted a case under domestic violence case before the Court of learned Chief Judicial Magistrate, Dhubri against the alleged victim and his family members and learned senior counsel has submitted that the present case is a counter blast against the case filed by the petitioner No. 1 Shanti Banu.

It is further submitted by learned senior counsel on behalf of the petitioner that in the meanwhile, the petitioner No. 3 namely Sagar Ali has already been arrested and hence, the anticipatory bail application in respect of the said petitioner has become infructuous.

It is also submitted that the petitioner No. 1 Shanti Banu, petitioner No. 5 Asma Khatun and petitioner No. 6 Jahiron Bibi were already granted interim bail by this Court by order dated 19.10.2023 and in pursuant to the directions of this Court, the above named petitioners have appeared before the Investigating Officer and has co-operated in investigation.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Fakirganj P. S. Case No. 139/2023 and has submitted that the petitioner No. 1 Shanti Banu, petitioner No. 5 Asma Khatun and petitioner No. 6 Jahiron Bibi have appeared before the Investigating Officer and their statement have already been recorded under Section 161 of the Code of Criminal Procedure, 1973.

It is also submitted by the learned Additional Public Prosecutor that the medical report of the injured victim shows that the injury sustained by the victim is a superficial cut injury and is of simple nature.

Considering the fact that there are pending litigations between both the sides and also considering the fact that the injury sustained by the victim in this case is superficial cut injury of simple nature, the custodial interrogation of the present petitioners does not appear to be necessary for fair completion of the investigation in Fakirganj P. S. Case No. 139/2023.

In view of the above, the interim anticipatory bail granted to the petitioner No. 1, Shanti Banu, petitioner No. 5 Asma Khatun and petitioner No. 6 Jahiron Bibi, respectively is hereby made absolute.

Further the petitioner No. 2 Kader Ali and petitioner No. 4 Saban Ali are hereby directed to appear before the Investigating Officer of Fakirganj P.S. Case No. 139/2023 within a period of 10 days from the date of this order and co-operate in the Investigating Officer and if they do so within the said period, in the event of their arrest in connection with Fakirganj P.S. Case No. 139/2023, 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 the arresting authority with the condition that they shall co-operate with the Investigating Officer in fair completion of the investigation.

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

Send back the case diary.

JUDGE

Comparing Assistant