

GAHC010010572023



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

AB/3545/2022

JAMAL UDDIN @ JAMAL AND 2 ORS
S/O LT. PAGU SHEIKH
VILL- SUAPATA PART-IV

P.O. AND P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783348

2: HOSEN ALI
S/O ABDUL MAJID
VILL- SUAPATA PART-IV

P.O. AND P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783348

3: NAJESH ALI
S/O LT. TAHAR ALI
VILL- SUAPATA PART-IV

P.O. AND P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783348
VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

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

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 27-01-2023

Heard Mr. M. Hussain, learned counsel for the petitioners namely, (1) Jamal Uddin @ Jamal (2) Hosen Ali and (3) Najesh Ali. Also heard Mr. B. Sharma, learned Addl. P.P. for the State of Assam.

The petitioners have filed an application under Section 438 Cr.P.C. as they are apprehending arrest in connection with Bilasipara P.S. Case No. 920/2016. under Sections 143/302 IPC.

The First Information Report [FIR] was lodged on 18.09.2016. In the FIR, the informant referred to an incident of killing of his brother named Asor Ali [Haser] at around 8-30 a.m., on 18.09.2016. In the FIR, the informant named 7 [seven] persons as accused including the present petitioner. It was alleged that the accused no. 1, named therein, along with the present petitioner and others together assaulted the informant's brother by sharp weapons and after severing his head from the body, they threw the dead body in the river.

Mr. Islam, learned counsel for the petitioner has submitted that though the present petitioners are named in the FIR, there was no involvement of them in the act of killing of the brother of the informant.

Mr. Sarma, learned Additional Public Prosecutor, who has received the concerned case diary, has submitted, on the basis of the materials available in the case diary, that the

deceased, Asor Ali [Haser] was known to be a hardened criminal, who had allegedly killed a number of persons after taking money to kill them. As the deceased was a notorious criminal, a mob of villagers *gheraod* him on 18.09.2016 and after killing him, severed his head off his body.

As per the post-mortem examination report, a number of injuries were found to have been inflicted on the body of the deceased and the head of the deceased was severed off his body. The cause of death was due to hemorrhage and shock as a result of injuries sustained by the deceased. In the case diary, the statements of a number of witnesses recorded under Section 161, CrPC, are available. None of the witnesses, save and except one, has implicated the present petitioners. The offence was committed as far back as in the year 2016. The lone witness who, in his statement, has stated about involvement of the two present petitioners, has stated to have made such statement on hearsay as his was not an eye-witness account.

I have considered the submissions at the Bar. The petitioner Nos. 1 and 2 have already been arrested and this petition under Section 438 Cr.P.C. against them has become infructuous. This petition against the petitioner Najesh Ali has to be taken into consideration.

In view of the foregoing discussions, it is directed that in the event of his arrest, the Investigating Agency is to release the petitioner Najesh Ali on bail of Rs. 25,000/- with a suitable surety of like amount to the satisfaction of the Arresting Authority with the conditions that-

- i. The petitioner will refrain from such activities with which he is alleged;
- ii. the petitioner shall appear before the Investigating Officer [I.O.] of the case once in a week for the next 4 [four] weeks and shall cooperate with the investigation and shall thereafter, make himself available as and when his presence is required by the I.O. in the investigation of the case;
- iii. the petitioner 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; and

- iv. the petitioner 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.

JUDGE

Comparing Assistant