

GAHC010244212023



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

Case No. : AB/3663/2023

GOLAP HUSSAIN AND 4 ORS
S/O LATE SUBBAT DEWANI
R/O VILL- KUCHINIMARA PUB
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR, ASSAM

2: AMINUL ISLAM
S/O GOLAP HUSSAIN
R/O VILL- KUCHINIMARA PUB
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSAM

3: NUR SIDDQUE @ NOOR SIDDIK
S/O GOLAP HUSSAIN
R/O VILL- KUCHINIMARA PUB
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSAM

4: ALINUR ISLAM
S/O GOLAP HUSSAIN
R/O VILL- KUCHINIMARA PUB
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSAM

5: NUR HAKIM @ NUR HAKIM MIAH @ GULLA
S/O GOLAP HUSSAIN
R/O VILL- KUCHINIMARA PUB
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. K M HASSAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 29.11.2023

Heard Mr. K. M. Hassan, learned counsel for the petitioners. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, *1. Golap Hussain, 2. Aminul Islam, 3. Nur Siddque @ Noor Siddik, 4. Alinur Islam and 5. Nur Hakim @ Nur Hakim Miah @ Gulla*, who are apprehending their arrest in connection with Mankachar P.S. Case No. 16/2021 under Sections 326/379/37 of the Indian Penal Code.

The learned counsel for the petitioners has submitted that during the pendency of this anticipatory bail application, the petitioner No. 2, namely, *Aminul Islam* was arrested in this case on 27.10.2023 and thereafter he was allowed to go on bail by this Court in Bail Application No. 4120/2023 by order dated 28.11.2023.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Mankachar P.S. Case No. 16/2021 and has opposed the grant of bail to the present petitioners on the ground that the victim in the case has sustained grievous injuries caused by sharp weapon, and therefore, it is not a fit case where

bail may be granted. She also submits that the witnesses who have been examined by the Investigating Officer during the investigation have implicated the accused persons named in the FIR including the present petitioners.

I have considered the submissions made by learned counsel for both sides and have gone through the materials available on record including the case diary of Mankachar P.S. Case No. 16/2021.

On perusal of the case diary, it appears that though there are incriminating materials against the present petitioners and though the victim has sustained grievous injury caused by sharp weapon, however, the statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973 are general in nature and does not specifically mention as to whether the present petitioners have caused the said injury on the victim or not. It also appears that the statement of the victim is also not available in the case diary.

On the other hand, one of the co-accused, namely, Aminul Islam has already been granted bail by this Court. Further, it appears that the incident alleged in the FIR had occurred two years ago i.e., in the year 2021 in the month of January and, therefore, custodial detention of the present petitioners, under the above facts and circumstances, does not appear to be necessary, if, they otherwise, cooperate in the investigation.

Considering the above facts, the petitioners, namely, *1. Golap Hussain, 3. Nur Siddque @ Noor Siddik, 4. Alinur Islam and 5. Nur Hakim @ Nur Hakim Miah @ Gulla* are hereby directed to appear before the Investigating Officer of Mankachar P.S. Case No. 16/2021 within a period of ten days from the date of this order and cooperate in the investigation. If they do so, within the stipulated period of time, in the event of their arrest, in connection with Mankachar P.S. Case No. 16/2021, 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 arresting authority, subject to the following conditions:-

1. That the petitioners shall appear before the Investigating Officer of Mankachar P.S. Case No. 16/2021 every week for next four weeks or till the investigation is completed, whichever is earlier and shall cooperate in the investigation,
2. That the petitioners shall not directly or indirectly make any inducement, threat or promise to any other persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts before the Investigating Officer.

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

Send back the case diary.

JUDGE

Comparing Assistant