

GAHC010247002022



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

Case No. : AB/3587/2022

MD. JAKIR HUSSAIN @ JAKIR ALI (NIPUL) AND ANR
S/O LATE SIKANDAR ALI, R/O VILL- DOLOITOLA, P.O.-HAZO, P.S.-HAZO,
DIST- KAMRUP, ASSAM, PIN-781102

2: SAFIDUR RAHMAN @ SAFED ALI
S/O LATE SIKANDAR ALI
R/O VILL- DOLOITOLA
P.O.-HAZO
P.S.-HAZO
DIST- KAMRUP
ASSAM
PIN-78110

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MS. T SOM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

02.02.2023

Heard Mr. R.P. Sarma, learned Senior Counsel assisted by Ms. T. Som,

learned counsel for the applicants and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with the Hajo P.S. Case No. 831/2022, under Sections 431/325/34 of the IPC and added section 302 of the IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicants, namely, Md. Jakir Hussain @ Jakir Ali [Nipul] and Safidur Rahman @ Safed Ali, for grant of pre-arrest bail.

3. The aforementioned case has been registered on the basis of an FIR lodged by one Jiaul Haque on 02.09.2022, to the effect that on that day, a quarrel took place between his elder brother, namely, Majibur Rahman and accused [i] Riajul Haque (Dhoina); [ii] Jakir Ali (Nipul); [iii] Reykat Ali (Babul); and [iv] Safid Ali and they have assaulted his brother by means of stick and injured him seriously and he was taken to Hajo medical, but he was referred to GMCH as he sustained grievous injuries.

4. It is to be noted herein that during the course of treatment at GMCH, the victim, Majibur Rahman succumbed to the injuries on 03.09.2022, and on a prayer being made by the IO, section 302 IPC is added with the permission of learned JMFC, Hajo.

5. Mr. Sarma, learned Senior Counsel submits that the applicants have preferred another anticipatory bail application, being AB No. 2855/2022, and the

same was dismissed vide order dated 18.11.2022, by this court after perusing the case diary. Mr. Sarma further submits that this is second application is preferred by the applicants on the ground that since rejection of the first application, the IO has examined some independent witnesses and in view of the statements of the said witnesses, further custodial interrogation of the applicants may not be required in the interest of investigation, and they are ready to cooperate with the investigating agency, and therefore, it is contended to allow the petition.

6. On the other hand, by producing the Case Diary before this Court, Mr. Lahkar, learned Additional Public Prosecutor vehemently opposed the petition on the ground that no fresh ground has been assigned by the applicants for entertaining this second anticipatory bail application and that the investigation is still going on and the IO has collected sufficient materials to show the complicity of the accused persons with the offence alleged in the FIR, and therefore, Mr. Lahkar contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and perused the Case Diary produced before this Court with the assistance of Mr. Lahkar, learned Additional Public Prosecutor and also perused the order dated 18.11.2022, passed by this court in AB No. 2855/2022.

8. It appears from the case diary that after dismissal of the first

application, vide order dated 18.11.2022, the investigating agency has examined 2 more witnesses. Having perused the statements of the aforesaid witnesses, along with the statements of other witnesses examined by the IO earlier, and also considering the nature of accusation of the offence and the punishment prescribed for the same as well as the stage of investigation and balancing the right of the applicants with that of the victim's family member, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be extended to the applicants at this stage, and therefore, the same is dismissed.

9. Case diary be returned.

JUDGE

Comparing Assistant