

GAHC010248742022



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

Case No. : AB/3626/2022

SHAHINUR ISLAM @ BANU MIAH AND ANR
S/O LT. MOKBUL HUSSAIN
VILL- BEKARDOBA
P.S. MANKACHAR
DIST. SOUTH SALMARA-MANKACHAR, ASSAM, PIN-783131

2: SAIDUR ISLAM @ NEPA SK.
S/O LT. MOKBUL HUSSAIN
VILL- BEKARDOBA
P.S. MANKACHAR
DIST. SOUTH SALMARA-MANKACHAR
ASSAM
PIN-78313

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 04-01-2023

Heard Mr. A.Z. Ahmed, learned counsel for the petitioners and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioners viz. [1] Shahinur Islam @ Banu Miah and [2] Saidur Islam @ Nepa Sk. have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Mankachar Police Station Case no. 269/2022, registered for the offences under Sections 365/34, Indian Penal Code [IPC].

3. The informant is the father of one Amarul Islam. In the FIR lodged on 06.09.2022, the informant had alleged that his son, aged about 16 years, had gone out with Saidul Islam [Chika], named as accused no. 1 [A-1], at around 09-00 a.m. on 02.09.2022 and since then, his son was missing. On receipt of the FIR, the case was registered for the offences under Sections 365/34, IPC. The dead body of the Amarul Islam was found in a paddy field on 07.09.2022. Accordingly, the offence under Section 302, IPC has been added in Mankachar Police Station Case no. 269/2022. In the FIR, the informant has also named the petitioner no. 1 as accused no. 2 [A-2] and the petitioner no. 2 as accused no. 3 [A-3] with the allegation that they were also involved in the conspiracy hatched for kidnapping of his son along with the accused no. 1 [A-1], Saidul Islam @ Chika, who had been arrested in the course of investigation.

4. As per the post-mortem examination report, the cause of death of the deceased was shock and hemorrhage due to major blood vessels injuries sustained by the deceased.

5. Mr. Sarma, learned Additional Public Prosecutor who has meticulously gone through the case diary including the statements of the witnesses and the other materials, has fairly submitted that no *prima facie* incriminating materials have been collected during the course of investigation carried out so far, connecting the two petitioners herein with the alleged kidnapping and death of the deceased. The case has been registered on 06.09.2022.

6. Having regard to the aforesaid fact situation obtaining in the case and in the absence of *prima facie* incriminating materials against the two petitioners *qua* the alleged kidnapping and death of the deceased amongst the materials collected during the course of investigation carried out so far, this Court is of the considered view that custodial interrogation of the

petitioners are not necessary for the purpose of carrying out further investigation into the case and their release on pre-arrest bail, at this stage of investigation, is not likely to bring any adverse effect in the course of further investigation, provided they extend their assistance and co-operation in the further investigation of the case by joining the investigation.

7. Accordingly, it is provided that in the event of arrest of the petitioners viz. [1] Shahinur Islam @ Banu Miah and [2] Saidur Islam @ Nepa Sk. in connection with Mankachar Police Station Case no. 269/2022, they shall be released on bail on furnishing a bail bond of ₹ 50,000/- each with one local surety each of the like amount, to the satisfaction of the arresting authority, subject to the conditions that :

[i] the petitioners shall appear before the Investigating Officer [I.O.] of the case within 7 [seven] 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 him from disclosing such facts to the court or to any police officer; and

[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.

8. The application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant