

GAHC010252422023



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

Case No. : Bail Appln./4102/2023

JAINUDDIN
S/O ABDUL SAFIK
R/O KHAKALBHANGI, JOGIGAON,
P.S. DALGAON, DIST. DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR M AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 30.11.2023

Heard Mr. M. Ahmed, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Jainuddin*, who has been detained behind the bar since 12.10.2023 (for last 50 days) in connection with Dalgaon

P.S. Case No. 315/2023 under Sections 447/294/326/34 of the Indian Penal Code with added Section 302 of the said Code.

The accusation against the present petitioner is that on 07.09.2023, one Khairul Islam, had lodged an FIR before the Officer-in-Charge of Dalgaon Police Station naming five nos. of accused persons in the FIR including the present petitioner, *inter alia*, alleging that on that day i.e., 07.09.2023 at about 1.30 PM, the accused persons named in the FIR came to the land of the informant to construct a road therein and when the first informant restrain them from doing so, the accused persons named in the FIR assaulted the brother of the first informant and the paternal uncle of the first informant causing grievous injuries on the paternal uncle, namely, Mahuruddin.

Learned counsel for the petitioner submits that there was a dispute between the family members of the petitioner as well as family members of the first informant over right of way over the land of the first informant and on 07.09.2023, there was an altercation between both sides over that issue in which both the sides sustained injuries, however, unfortunately, Mahuruddin succumbed to injuries. It is further submitted by learned counsel for the petitioner that the petitioner also sustained grievous injuries on his right hand for which he had to obtain treatment at Patna and immediately after the incident he went to Patna for his treatment. It is only after when he came back from obtaining preliminary treatment he was arrested.

Learned counsel for the petitioner also submits that the petitioner has been detained behind the bar for last 50 days and he is in need of further medical treatment. It is further submitted that in the meanwhile one of the co-accused, namely, Mamin Ali has been granted bail by a Co-ordinate Bench of this Court in Bail Application No. 4101/2023.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Dalgaon P.S. Case No. 315/2023 and has opposed the grant of bail to the present petitioner on the ground that there are incriminating materials against the present petitioners as he was the person who assaulted the deceased with a bamboo *lathi* on the vital part of his body i.e., head. It is submitted that the learned Additional Public Prosecutor that two of the co-accused are yet to be arrested and, hence, if at this stage, the petitioner is allowed to go on bail, it would hamper the arrest of the remaining co-accused. However, he fairly submits that in the meanwhile the statement of witnesses have been recorded and the Investigating Officer has collected the injury report as well as post-mortem examination report of the deceased.

I have considered the submissions made by learned counsel for both sides and have perused the materials on record including the case diary of Dalgaon P.S. Case No. 315/2023.

Though, it appears from the materials on record that there are incriminating materials against the present petitioner in the case diary, however, considering the fact that the present petitioner was also injured and he also sustained dislocation of his right hand in the incident and he has already been detained behind the bar for last 50 days and also considering the fact that in the meanwhile, the investigation has fairly progressed, therefore, merely because of the fact that the two of the co-accused are not arrested may not be a reason for continued detention of the present petitioner, if his custodial detention is not otherwise for fair completion of the investigation.

For the reasons mentioned above, the petitioner, namely, *Jainuddin* is hereby allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand only) with one surety of like amount to the satisfaction of learned Chief Judicial Magistrate,

Darrang, subject to the following conditions:-

1. That the petitioner shall cooperate in the investigation and shall appear before the Investigating Officer;
2. That the petitioner 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 bail application is hereby disposed of.

Send back the case diary.

JUDGE

Comparing Assistant