

GAHC010253262023



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

Case No. : AB/3794/2023

ABU SAYED PARAMANIK @ ABU SAYED AND 5 ORS
S/O LATE NAYEB UDDIN
R/O VILL- SUPERIBHITA, P.O TULSIBARI UNDER LAKHIPUR POLICE
STATION IN THE DISTRICT OF GOALPARA, ASSAM, PIN NO. 783132

2: SADEK ALI @ SAYED ALI
S/O LATE NAYEB UDDIN
R/O VILL- SUPERIBHITA
P.O TULSIBARI UNDER LAKHIPUR POLICE STATION IN THE DISTRICT OF
GOALPARA
ASSAM
PIN NO. 783132

3: DELBAR ALI @ DELOWAR HUSSAIN
S/O LATE NAYEB UDDIN
R/O VILL- SUPERIBHITA
P.O TULSIBARI UNDER LAKHIPUR POLICE STATION IN THE DISTRICT OF
GOALPARA
ASSAM
PIN NO. 783132

4: ANOWAR HUSSAIN PARAMANIK @ ANOWAR HUSSAIN
S/O DELBAR ALI
R/O VILL- SUPERIBHITA
P.O TULSIBARI UNDER LAKHIPUR POLICE STATION IN THE DISTRICT OF
GOALPARA
ASSAM
PIN NO. 783132

5: ANOWARA KHATUN
W/O DELBAR ALI
R/O VILL- SUPERIBHITA
P.O TULSIBARI UNDER LAKHIPUR POLICE STATION IN THE DISTRICT OF
GOALPARA

ASSAM
PIN NO. 783132

6: ABDUL BAKER @ SAIFUL ISLAM
S/O DELBAR ALI
R/O VILL- SUPERIBHITA
P.O TULSIBARI UNDER LAKHIPUR POLICE STATION IN THE DISTRICT OF
GOALPARA
ASSAM
PIN NO. 78313

VERSUS

THE STATE OF ASSAM
REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 23.11.2023

Heard Mr. H. R. A. Choudhury, learned senior counsel assisted by A. F. N. U. Mollah, 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. Abu Sayed Paramanik @ Abu Sayed, 2. Sadek Ali @ Sayed Ali, 3. Delbar Ali @ Delowar Hussain, 4. Anowar Hussain Paramanik @ Anowar Hussain, 5. Anowara Khatun and 6. Abdul Baker @ Saiful Islam who are apprehending their arrest in connection with Lakhipur P.S. Case No. 311/2023 under Sections 143/341/342/307/506 of the Indian Penal Code.

The accusation against the present petitioners is that on 28.10.2023, one Azad Ali had an FIR before the Officer-in-Charge of Lakhipur Police Station, *inter alia*, alleging that on 27.10.2023, the accused persons named in the FIR (total 10 nos. of accused persons are named in the FIR) have assaulted the minor nephew of the first informant, namely, Bodar Uddin and caused injuries on his person.

Learned senior counsel for the petitioners has submitted that there was an altercation on 27.10.2023 as alleged in the FIR, however, the cause of altercation was that prior to the lodging of the FIR against the present petitioners, the petitioner No. 3, namely, Delbar Ali had lodged an FIR before the Officer-in-Charge of Lakhipur P.S. Case No. 312/2023 on 27.10.2023 against 14 nos. of accused persons including the alleged victim as well as informant, namely, Azad Ali wherein it has been alleged that the victim, namely, Bodar Uddin used to disturb and tease the 15 years old minor daughter of the petitioner No. 3, namely, Delbar Ali and on 27.10.2023, the daughter of the petitioner No. 3 was attacked by the said Bodar Uddin and she was attempted to be abducted by the accused persons named in the FIR.

Learned senior counsel for the petitioners has submitted that there was an altercation and that was only because of the fact that the said Bodar Uddin have teased the daughter of the petitioner No. 3. It is further submitted that the petitioners would cooperate in the investigation if they are allowed to go on bail.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Lakhipur P.S. Case No. 311/2023 and has submitted that there are incriminating materials against the present petitioners more specifically against the petitioner No. 3 and 4, namely, Delbar Ali and Anowar Hussain to have assaulted the victim Bodar Uddin. She has also pointed out that from the discharge summery of the injured Bodar Uddin available in the case diary, it appears that the injured

had suffered head injury (left temporal hemorrhagic contusion) following physical assault and was treated conservatively by the doctors. However, she has also submitted that apart from the discharge summary, no other injury report is available on record. She has opposed to grant the bail to the present petitioners on the ground that the victim has been mercilessly assaulted by a mob in which he sustained severe injuries.

I have considered the submissions made by learned counsel for both sides and have gone through the materials on record.

It appears from the materials available on record that there is an allegation against the victim also of teasing the daughter of the petitioner No. 3 and the sister of petitioner No. 4 for which it is not unnatural that some altercation would have happened. It also appears from the discharging summary of the victim Bodar Uddin that he was admitted in the hospital on 31.10.2023 and was discharged from the hospital on 04.11.2023 which indicates that he remained in the hospital for five days and was provided conservative treatment and at the time of his discharge, he was stable and no significant abnormality was observed in the condition of the patient/victim.

Considering the fact that there are cross FIRs from both side and from the material available on record, at this stage, it appears that the victim has not suffered any grievous injury, and also considering the fact that the petitioners are ready to cooperate in the investigation. Hence, this Court is of considered opinion that custodial detention of the petitioners may not be necessary, if they cooperate in investigation.

In view of the above, the above named petitioners are hereby directed to appear before the Investigating Officer of Lakhipur P.S. Case No. 311/2023 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 Lakhipur P.S. Case No. 311/2023, the above named petitioners 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 petitioner shall cooperate in the investigation and shall appear before the Investigating Officer as and when so required by 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 anticipatory bail application is hereby disposed of.

Send back both the case diaries.

JUDGE

Comparing Assistant