

GAHC010254642023



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

Case No. : AB/3824/2023

ZIADUL MIAH AND ANR
S/O MAJARUL HOQUE
R/O VILL- DAKERGAON
P.O. KAKRIPARA, P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR, ASSAM

2: NUR AMIN
S/O SHAHAZAMAL
R/O VILL- DAKERGAON
P.O. KAKRIPARA
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSA

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 MRIDUL KUMAR KALITA**

ORDER

Date : 15.11.2023

Heard Mr. L. R. Mazumder, learned counsel for the petitioners. Also heard Mr. B. Sarma, 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, *Ziadul Miah and Nur Amin* who are apprehending their arrest in connection with Mankachar P.S. Case No. 26/2023 under Sections 120(B)/365/302/201 of the Indian Penal Code.

The gist of accusation in this case is that on 20.01.2023, one Amirul Islam had lodged an FIR before the Officer-in-Charge of Mankachar Police Station, *inter alia*, alleging that his brother, namely, Nur Nobil went missing on 19.10.2022 while he was returning to his house from the house of his father-in-law. It is further alleged in the FIR that on 20.01.2023, one dead body was recovered lying in an abandoned ditch at village Kakripara, Beparipara and upon noticing the structure and wearing apparels, it was assumed that it would be the dead body of the informant's missing brother. It is further alleged in the FIR that on 19.10.2022 at night, a public commotion took place and his brother was seen with the accused persons named in the FIR including the present petitioners and it is suspected that the said accused persons had kidnapped the brother of the first informant and killed him after subjecting him to torture.

Learned counsel for the petitioners has submitted that though the petitioners has been named in the FIR, however, he is in no way involved in the offence alleged in the FIR.

It is further submitted by learned counsel for the petitioners that one of

the co-accused, who was also named in the FIR, namely, Zorul @ Jahirul Islam has already been granted bail by a Co-ordinate Bench of this Court after perusal of the case diary as well as post-mortem examination report. While granting bail to the co-accused, it was observed by the Co-ordinate Bench of this Court that on perusal of the post-mortem examination report, it reveals that there is no medical opinion that the deceased was subjected to torture or had any injury and according to the medical opinion, the cause of the death of the deceased due to asphyxia due to drowning.

Learned counsel for the petitioners submits that the present petitioners are ready to cooperate in the investigation and as one of the co-accused has already been granted bail and they are similarly situated with that of the said co-accused they may also be allowed to go on bail.

Learned Additional Public Prosecutor fairly submits that the petitioner seems to be entitled to protection under Section 438 on the ground of parity as one of the co-accused has already been granted bail by a Co-ordinate Bench of this Court.

In view of the submissions made by learned counsel for both sides, the petitioners, namely, *Ziadul Miah and Nur Amin* are hereby directed to appear before the Investigating Officer of Mankachar P.S. Case No. 26/2023 within a period of ten(10) 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. 26/2023, the above named petitioners shall be allowed to go on interim bail of Rs.30,000/- (Rupees Thirty Thousand) each with one surety of like amount to the satisfaction of arresting authority, subject to the conditions that:-

1. They shall cooperate with the Investigating Officer in the investigation;
2. They shall not directly or indirectly make any inducement, threat or promise to any persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts to the Investigating Officer;
3. They shall not leave the jurisdiction of Mankachar Police Station during the pendency of the investigation without prior leave of the Investigating Officer.

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

JUDGE

Comparing Assistant