

GAHC010254872022



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

Case No. : AB/3679/2022

SHAHAR ALI @ SAHAR ALI AND 2 ORS.
S/O ABUL KASHEM,
VILL.- RAM HARIR CHAR PART- I,
P.O.- RAM HARIR CHAR,
P.S.- GOALPARA RIVER,
DIST.- GOALPARA, ASSAM, PIN- 783129.

2: BILLAL HOSSEN @ BILLAL HUSSAIN
S/O LATE HASHEM ALI

VILL.- RAM HARIR CHAR PART- I

P.O.- RAM HARIR CHAR

P.S.- GOALPARA RIVER

DIST.- GOALPARA
ASSAM
PIN- 783129.

3: HANIF ALI @ HANIP ALI
S/O LATE HASHEM ALI

VILL.- RAM HARIR CHAR PART- I

P.O.- RAM HARIR CHAR

P.S.- GOALPARA RIVER

DIST.- GOALPARA
ASSAM
PIN- 783129

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR. M H TALUKDAR

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

06.02.2023

Heard Mr. M.H. Talukdar, learned counsel for the petitioners. Also heard Mr. B. Sharma, learned Addl. P.P. appearing for the State.

The petitioners, namely, (1) Shahar Ali @ Sahar Ali, (2) Billal Hossen @ Billal Hussain, and (3) Hanif Ali @ Hanip Ali have filed an application under Section 438 Cr.P.C. with a prayer for pre-arrest bail as they are apprehending arrest in connection with PRC P.S. Case No. 229/2022 (arising out of Goalpara River P.S. Case No. 26/2021 under Sections 341/325/326/307/34 IPC which is at present pending in the Court of the Additional Chief Judicial Magistrate, Goalpara.

The FIR unfolds that on the morning of 30.10.2021, while the informant's son Manowar Hussain was ploughing his land with the help of a tractor and was passing with his tractor over the uncultivated land of Jahurul Islam, the accused persons named in the FIR assaulted Manowar Hussain causing grave injuries on his body. They also attacked him with a spade with an intention to commit murder. The informant then ran towards his son but the accused persons

attacked the informant also. Some persons who were working in the fields came to his rescue. The informant's son Manowar Hussain was seriously injured and after treatment in Goalpara Civil Hospital, the local people took his son to Guwahati for better treatment.

It is submitted on behalf of the petitioners that the accused persons who are named in the FIR have already been enlarged on bail.

It is also submitted that the FIR was lodged by a co-villager who could have easily named the present petitioners, but the present petitioners were not named in the FIR as they are innocent.

The learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in ***Aman Preet Singh Vs. CBI Through Director: AIR 2021 SC 4154*** wherein it has been observed that:-

"The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in [Section 170, Cr.P.C.](#) call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail."

It has also been held in ***Aman Preet Singh's Case*** (supra) that:-

"If we may say, the observation hereinabove would supplement our observations made in Siddharth vs. State of Uttar Pradesh & Anr. (supra) and must be read together with that judgment.

The given factual scenario completely fits the aforesaid as the appellant was never taken into custody during investigation. Suffice to say that it would be a fit case for the trial Court to grant bail to the appellant on the next date on terms and conditions to its satisfaction. As a measure of precaution, largely arising from the manner of submission of public prosecutor before the trial Court, it is made clear that the interim protection granted by this Court would continue till the appropriate order is passed by the trial Court."

The learned Addl.P.P. has raised objections stating that ***Aman Preet Singh's Case*** is not similar to this case. In this case, the petitioners have been evading arrest. Charge is yet to be framed and the petitioners have been implicated by the witnesses whose statements have been recorded under Section 161 Cr.P.C.

I have given my anxious consideration to the submissions at the Bar.

The petitioners have pledged to co-operate with the trial. They are willing to face trial. The co-accused who are named in the FIR have already been enlarged on bail.

In view of my foregoing discussions, I deem it proper to grant the privilege of Anticipatory Bail to the petitioners.

In the event of arrest of the petitioners, namely, (1) Shahar Ali @ Sahar Ali, (2) Billal Hossen @ Billal Hussain, and (3) Hanif Ali @ Hanip Ali, shall be released on bail on furnishing bail bond of Rs. 35,000/- with one suitable surety

of like amount to the satisfaction of the arresting authority under the conditions that:-

(1) the petitioners will co-operate with the trial and the petitioner will not jump the bail;

(2) the petitioners will not exercise threats to witnesses;

(3) the petitioners will not leave the jurisdiction of the trial Court without prior permission of the Jurisdictional Court, till completion of trial.

Application stands disposed of.

JUDGE

Comparing Assistant