

GAHC010256242022



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

Case No. : Bail Appln./3467/2022

ANUWAR HUSSAIN AND 3 ORS
S/O LATE MOHIBUR RAHMAN
R/O UDALI GAON, P.S. LANKA
DIST. HOJAI, ASSAM

2: ALEMA BEGUM @ ALAMARA BEGUM
W/O ANUWAR HUSSAIN
R/O UDALI GAON
P.S. LANKA
DIST. HOJAI
ASSAM

3: IKRAMUL HUSSAIN
S/O LATE MOHIBUR RAHMAN
R/O UDALI GAON
P.S. LANKA
DIST. HOJAI
ASSAM

4: ZABIR HUSSAIN
S/O LATE MOHIBUR RAHMAN
R/O UDALI GAON
P.S. LANKA
DIST. HOJAI
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE ADDITIONAL PP, GOVT. OF ASSAM

Advocate for the Petitioner : MR B CHANDA
Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
ORDER**

10.01.2023

Heard Mr. B. Chanda, learned counsel for the accused-petitioners and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioners viz. [1] Anuwar Hussain, [2] Alema Begum @ Alamara Begum, [3] Ikramul Hussain, and [4] Zahir Hussain have prayed for their release on bail in connection with Lanka Police Station Case no. 467/2022, registered for the offences under Sections 341/302/34, Indian Penal Code [IPC].

3. The accused-petitioners were arrested and produced before the Court of learned Chief Judicial Magistrate, Sankardev Nagar, Hojai on 12.11.2022 and on being so produced, they were remanded to custody. Thus, the accused-petitioners are in custody for 60 days since 12.11.2022.

4. In the First Information Report [FIR] lodged on 11.11.2022, the informant has arraigned the four accused-petitioners as the accused. The accused-petitioner no. 1, the accused-petitioner no. 3 and the accused-petitioner no. 4 are the own brothers of the deceased, Babul Hussain. The accused-petitioner no. 2 is the wife of the accused-petitioner no. 1.

5. In the FIR, the informant has *inter alia* alleged that at around 11-00 p.m. on 10.11.2022, the accused persons, in her absence in the house, had intruded into their house and beaten up her husband, Babul Hussain by sticks and thereafter, administered poison in him, thereby, putting him on the brink of death. It was alleged that there were also occurrence of incidents of similar nature earlier. After being beaten up, the husband of the informant, Babul Hussain was taken to HAMM Hospital, but the doctors at HAMM Hospital

declared the informant's husband dead.

5. Mr. Sarma, learned Additional Public Prosecutor who has received the case diary, has submitted that the post-mortem examination on the dead body was performed on 12.11.2022 at B.P. Civil Hospital, Nagaon. In the post-mortem examination report that final opinion as regards cause of death of the deceased is kept pending due to non-receipt of the FSL report. On the previous date of listing, 02.01.2023, the learned Additional Public Prosecutor had sought time to produce the FSL report today. Mr. Sarma, learned Additional Public Prosecutor has submitted that the FSL report has not yet been received.

6. I have perused the materials available in the case diary, collected during the course of investigation carried out so far. It has emerged from the materials in the case diary that the husband of the informant had slept in his bed room alone in the night of 10.11.2022 in the absence of the informant i.e. his wife. It was in the morning hours, when the informant's husband did not wake up he was taken to the hospital by the accused-petitioner no. 1. The materials in the case diary also go to indicate that all the brothers including the deceased used to reside under the same roof but in different rooms. Though the informant has alleged in the FIR that the deceased was beaten up by the accused persons, named in the FIR, no injury has been reported in the post-mortem examination report as well as in the inquest report. In the course of investigation, the statements of vital witnesses including the witnesses living in the neighbourhood of the deceased's house, have already been examined. The accused-petitioners during the 60 days custody, have been thoroughly interrogated and their statements have been recorded under Section 161, CrPC and the same are also available in the case diary. It transpires that the FSL report is awaited to render final opinion as regards cause of death of the deceased. It is projected on behalf of the accused-petitioners that the deceased was a patient of epilepsy and the cause of death might be attributable to epilepsy.

7. Having regard to the extent of progress made in the investigation till date and considering the period of detention of the accused-petitioners for 60 days since 12.11.2022, this Court is of the considered view that further custodial detention of the accused-petitioners

are not necessary for the purpose of carrying out further investigation of the case and their release on bail, at this stage of investigation, is unlikely to bring any adverse effect in the further investigation of the case, provided they continue to extend their assistance and co-operation in the further investigation of the case.

8. Accordingly, it is directed that the accused-petitioners shall be released on bail on furnishing a bail bond of Rs. 50,000/- each with one local surety each of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Sankardev Nagar, Hojai, subject to the conditions that:-

- [i] the accused-petitioners shall co-operate with the investigation and make themselves available for interrogation whenever required by the Investigating Officer [I.O.] of the case;
- [ii] the accused-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 them from disclosing such facts to the court or to any police officer;
- [iii] the accused-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;
- [iv] the accused-petitioners shall maintain law and order and they shall not commit an offence similar to the offence of which they are accused, or of the commission of which they are suspected; and
- [v] the accused-petitioners shall regularly remain present during the trial and co-operate the Court to complete the trial for the above offences, if charge sheeted in the case.

9. The bail application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant