

GAHC010256862022



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

Case No. : Bail Appln./3508/2022

AMIR HAMJA AND 8 ORS.
S/O ABDUL SALAM MONDAL,
VILL.- MAKRAM BILL,
P.S.- GOSAIGAON,
DIST.- KOKRAJHAR, ASSAM.

2: MUNNAF ALI
S/O ABDUL KUDDUS
VILL.- MAKRAM BILL
P.S.- GOSAIGAON
DIST.- KOKRAJHAR
ASSAM.

3: NURUL ISLAM
S/O LT. RIYASUDDIN
VILL.- MAKRAM BILL
P.S.- GOSAIGAON
DIST.- KOKRAJHAR
ASSAM.

4: MUKBUL HUSSAIN
S/O ABDUL BATEN
VILL.- MAKRAM BILL
P.S.- GOSAIGAON
DIST.- KOKRAJHAR
ASSAM.

5: AJAHAR ALI
S/O MOKBUL ALI
VILL.- MAKRAM BILL
P.S.- GOSAIGAON
DIST.- KOKRAJHAR
ASSAM.

6: JAMIRUL HUSSAIN
S/O MOKBUL ALI
VILL.- MAKRAM BILL
P.S.- GOSAIGAON
DIST.- KOKRAJHAR
ASSAM.

7: MANIK ALI
S/O USUB ALI
VILL.- BILASHIPARA
P.S.- BILASHIPARA
DIST.- DHUBRI
ASSAM.

8: NIJAMUDDIN
S/O ISMAIL HUSSAIN
VILL.- BILASHIPARA
P.S.- BILASHIPARA
DIST.- DHUBRI
ASSAM.

9: MAJIBUR ALI
S/O LT. ABDUL KADER ALI
VILL.- 1 NO. TASPUR
BHUMKA
P.S.- GOSAIGAON
DIST.- KOKRAJHAR
ASSAM

VERSUS

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

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 19-01-2023

Heard Mr. B. Chowdhury, learned counsel for the accused-petitioners in

B.A. no. 3508/2022; Mr. M. Ali, learned counsel for the accused-petitioners in B.A. no. 156/2023; and Mr. B. Sharma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By the two applications under Section 439, Code of Criminal Procedure, 1973, the accused-petitioners viz. [1] Amir Hamja, [2] Munna Ali, [3] Nurul Islam, [4] Mukbul Hussain, [5] Ajahar Ali, [6] Jamirul Hussain, [7] Manik Ali, [8] Nijamuddin and [9] Majibur Ali in B.A. no. 3508/2022 and the accused-petitioners viz. [1] Abdul Rakhil Ali @ Abdul Rakhip Hoque and [2] Abdul Rejak @ Abdul Rezzak in B.A. 156/2023 have prayed for their release on bail in connection with Fatasil Ambari Police Station Case no. 247/2022 [corresponding G.R. Case no. 9240/2022], registered for offences under Sections 302/34, Indian Penal Code [IPC]. As both the applications preferred under Section 439, CrPC have arisen out of Fatasil Ambari Police Station Case no. 247/2022 [corresponding G.R. Case no. 9240/2022], registered for the offences under Sections 302/34, Indian Penal Code [IPC], both are taken up together at the request of the learned counsel for the parties.

3. In the First Information Report [FIR] lodged on 17.11.2022 by one Assistant Sub-Inspector of Police, attached to Fatasil Ambari Police Station, the informant has stated that at around 08-03 a.m. on 17.11.2022, the Police Station was informed by a Havildar over phone that within the premises of an under-construction apartments building, belonging to one Sri Tapan Chakraborty, located at Adagudam, one person was caught red-handed and thereafter, was badly assaulted. Accordingly, the General Diary Entry no. 447/2022 dated 17.11.2022 was registered. On arrival of the police team at the place of occurrence, it was found that one person named, Sunil Sharma was

kept tied inside the under-construction apartments building and he was assaulted by 11 nos. of accused persons named in the FIR, who are the persons engaged in the construction of the building. The FIR has further mentioned that the victim was assaulted on the premise that he was caught while stealing. The injured victim was sent to the Guwahati Medical College and Hospital [GMCH] where the victim met his death. In the FIR all these 11 nos. of accused-petitioners have been named.

4. All the accused-petitioners were arrested and produced before the Court of learned Chief Judicial Magistrate, Kamrup [M], Guwahati on 18.11.2022 and on being so produced, they were remanded to custody. Thus, the accused-petitioners are in custody since 18.11.2022.

5. The materials in the case diary collected in the course of investigation, carried out so far, includes the statement of a number of witnesses recorded under Section 161, CrPC as well as the post-mortem examination report of the deceased, which was performed on 17.11.2022 at the GMCH. The statements of the witnesses go to show that the victim was tied up inside the under-construction apartments building. From the statements of the witnesses, it has emerged that the victim was in the process of stealing a mobile phone and at that point of time, he was caught red-handed. The accused-petitioners had thereafter, tied the victim in a post and continued to assault him.

6. It has been contended on behalf of the accused-petitioners that after finding him trapped while committing the act of theft, the victim finding no option had jumped from the second floor of the under-construction apartments building. It has been further contended that considering the period of custody of the accused-petitioners since 18.11.2022, the accused-petitioners' prayer for

bail may be considered in view of the progress made in the investigation so far.

7. From the statements of the witnesses recorded under as well as from the statements of the accused-petitioners under Section 161, CrPC, it has emerged that the accused-petitioners were instrumental behind tying the victim with the post by ropes and were involved in the act of assault. As per the post-mortem examination report, the death of the victim was due to hemorrhagic shock as a result of injuries sustained over the body. All the injuries were found ante-mortem in nature and caused by blunt weapons. It has been opined that the injury nos. 5 and 6 were caused by long slender weapon and the death was homicidal in nature. The post-mortem examination report has further reported the following injuries:

1. Contusion of size 3.5 cm X 2 cm present over left side of face and is red in colour.
2. Abrasion of size 6 cm X 4.5 cm present over lateral aspect of right arm surrounded by contusion of size 15cm X 15cm present over antero-lateral aspect of right arm and is red in colour.
3. Contusion of size 15cm X 14cm present over antero-lateral aspect of left arm and is red in colour.
4. Abrasion of size 4cm X 1.5cm present over antero-lateral aspect of left elbow surrounded by contusion of size 12cm X 10cm and is red in colour.
5. An oblique parallel contusion of size 30cm X 3.4cm present over back of chest extending from left upper back of chest to right lower back of chest and is red in colour [rail line contusion].

6. Parallel contusion of size 7cm X 3cm present over right side of chest in its lower one-third in the mid-axillary line and is red in colour [rail line contusion].
7. Diffuse contusion is present over both the buttocks of size 37cm X 19cm and is red in colour.
8. Contusion of size 23cm X 20cm present over postero-lateral aspect of right thigh and is red in colour.
9. Contusion of size 26.5cm X 24cm present over postero-lateral aspect of left thigh and is red in colour.
10. Abrasion of size 9cm X 1cm present over anterior aspect of right thigh in its lower half and is red in colour.
11. Contusion of size 14cm X 12.5cm present of anterior aspect of right leg in its upper half and is red in colour.
12. Multiple contusion of size ranging from 2cm X 2cm to 1cm X 1cm present over back of abdomen and is red in colour.
13. Multiple abrasion of size ranging from 2cm X 2cm to 1cm X 1cm present over anterior aspect of left ankle and is red in colour.
14. Multiple abrasion of size ranging from 2cm X 2cm to 1cm X 1cm present over posterior aspect of left forearm in its lower one-third and is red in colour.
15. Diffuse contusion present over both the soles of feet and is red in colour.

8. Having regard to the nature and gravity of the offence and the manner in which the same was committed vis-à-vis the nature of involvement of the accused-petitioners, I am not persuaded to allow the prayer of bail of the accused-petitioners under Section 439, CrPC at this stage of investigation. Consequently, the prayers for bail stand rejected.

JUDGE

Comparing Assistant