

GAHC010257322022



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

Case No. : AB/3705/2022

JAMAL UDDIN AND 6 ORS
S/O ABED ALI
R/O VILL- TARANGAJAR
P.S. FAKIRGANJ, D
IST. DHUBRI, ASSAM

2: MOSHAROB HUSSAIN
S/O JAMAL UDDIN
R/O VILL- TARANGAJAR
P.S. FAKIRGANJ

DIST. DHUBRI
ASSAM

3: MOKIBUR RAHMAN
S/O JAMAL UDDIN
R/O VILL- TARANGAJAR
P.S. FAKIRGANJ

DIST. DHUBRI
ASSAM

4: MOSTAFIZUR RAHMAN
S/O JAMAL UDDIN
R/O VILL- TARANGAJAR
P.S. FAKIRGANJ

DIST. DHUBRI
ASSAM

5: ABDUS SOBUR
S/O ABED ALI
R/O VILL- TARANGAJAR
P.S. FAKIRGANJ

DIST. DHUBRI
ASSAM

6: BAISUN NEHAR
W/O MOKIBUR RAHMAN
R/O VILL- TARANGAJAR
P.S. FAKIRGANJ

DIST. DHUBRI
ASSAM

7: MORJINA KHATUN
W/O ABDUS SOBUS
R/O VILL- TARANGAJAR
P.S. FAKIRGANJ

DIST. DHUBRI
ASSA

VERSUS

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

Advocate for the Petitioner : MR. R GOSWAMI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 19-01-2023

Heard Mr. R. Goswami, learned counsel for the petitioners; Mr. B. Sharma, learned Additional Public Prosecutor for the respondent State of Assam; and Ms. M. Begum, learned counsel for the informant.

2. By this application under Section 438, Code of Criminal Procedure,

1973 [CrPC], the petitioners viz. [1] Jamal Uddin, [2] Mosharob Hussain, [3] Mokibur Rahman, [4] Mostafizur Rahman, [5] Abdus Sobur, [6] Baisun Nehar and [7] Morjina Khatun have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Krishnai Police Station Case no. 102/2022, registered for offence punishable under Sections 120B/326/307, Indian Penal Code [IPC].

3. In the First Information Report [FIR] lodged in connection with Krishnai Police Station Case no. 102/2022 under Sections 120B/326/307, IPC, the informant has arrayed 10 [ten] persons as accused including the 7 [seven] petitioners herein, as accused. As per the FIR, when the informant and his elder brother, Towajuddin Ahmed entered into a building situated in a plot of land, allegedly belonging to them, at around 11-30 a.m. on 27.11.2022, the accused persons had assaulted them with sharp weapons, etc. and as a result, the elder brother of the informant, Towajuddin Ahmed received a stab injury on his head and became unconscious.

4. Mr. Goswami, learned counsel for the petitioners has drawn attention to another FIR lodged in connection with Krishnai Police Station Case no. 101/2022 under Sections 447/294/323/379/34, IPC from the petitioners' side in respect of the same incident, as alleged in the FIR of Krishnai Police Station Case no. 102/2022. In the said FIR, it has been projected that the petitioners' side was in continuous occupation for 3 [three] years of the plot of land in question, after making payment of an amount of ₹ 63,00,000/- as *baina*. On the date of the incident, a group of assailants led by the informant and his elder brother, Towajuddin Ahmed, by criminally trespassing into the plot of land measuring 2 Kathas 10 Lessas [02K-10L], attacked the members of the

petitioners' family. It has been projected on behalf of the petitioners that the petitioners' side was in continuous occupation of the disputed plot of land since about 3 years after making a payment of an amount of Rs. 63,00,000/- pursuant to the two agreements for sale of land, dated 03.03.2020 and 25.06.2021 respectively, which are annexed as Annexure-3 and Annexure-2 respectively to the bail application.

5. Ms. Begum, learned counsel appearing for the informant by referring to the contents of the Objection filed on behalf of the informant to the instant bail application, has submitted that the elder brother of the informant, Towajuddin Ahmed had received a stab injury on his head in the incident in question. It has been further contended that the petitioners' side though agreed for an amount of Rs. 70,00,000/- as consideration for the disputed plot of land, only an amount of Rs. 4,05,000/- has been paid till date. Ms. Begum has further submitted that the disputed plot of land was, however, in possession of the petitioner no. 3, who was the signatory to the two agreements for sale of land dated 03.03.2020 and 25.06.2021.

6. The materials in the case diary, collected during the course of investigation carried out so far, go to indicate that the genesis of the incident dated 27.11.2022 is the disputed plot of land in respect of which the two sides had entered into two agreements for sale of land, as mentioned above. As has been submitted above, the disputed plot of land, on the date of incident, was in possession of the petitioners' side with the petitioner no. 3 herein as the signatory to the afore-mentioned agreements for sale of land dated 03.03.2020 and 25.06.2021. In so far as the allegations that only an amount of Rs. 4,05,000/- had been paid against the two agreements for sale of land, no

further material to indicate that the informant has instituted any proceeding alleging that those two agreements for sale of land were forged documents, denying receipt of the part of the agreed considerations mentioned in the said two Agreements for sale of land and denying signatures of Towajuddin Ahmed appearing therein. The injury report pertaining to Towajuddin Ahmed, available in the case diary goes to indicate that he sustained injury by blunt object and after treatment as an outdoor patient, he was discharged on the same date from the hospital.

7. Having regard to the fact that the petitioners' side was in possession of the disputed plot of land in question and the fact that the petitioners pursuant to the interim protection granted to them by order dated 15.12.2022 have already appeared before the Investigating Officer [I.O.] of the case and, thereby, joined the investigation, this Court is of the considered view that custodial interrogation of the petitioners for the purpose of carrying out further investigation of the case is not necessary and their release on pre-arrest bail, at this stage of investigation, is not likely 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, the interim protection granted to the petitioners by order dated 15.12.2022, is made absolute, subject to the following conditions :

[i] the 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 him from disclosing such facts to the court or to any police officer;

[ii] the 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;

[iii] the 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

[iv] the 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