

GAHC010259112022



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

Case No. : Bail Appln./3481/2022

MAINUL HOQUE
S/O LATE AKHMAT ALI
R/O ISLAMUR
P.S. DHULA
P.O. DHULA
DIST. DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. T DEURI

Advocate for the Respondent : PP, ASSAM

Linked Case : Bail Appln./3620/2022

MUBARAK ALI AND ANR
S/O HAMIDUR RAHMAN
R/O ISLAMPUR
P.O. KHARUPETIA
P.S. DHULA
DIST. DARRANG
ASSAM

2: AKBAR ALI
S/O HAMIDUR RAHMAN
R/O ISLAMPUR
P.O. KHARUPETIA
P.S. DHULA
DIST. DARRANG
ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP
ASSAM

Advocate for : MR H R A CHOUDHURY
Advocate for : PP ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 05-01-2023

Heard Mr. T. Deuri, learned counsel for the accused-petitioner in B.A. no. 3481/2022; Mr. A. Ahmed, learned counsel for the accused-petitioners in B.A. no. 3620/2022; and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By these two applications under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioner viz. Mainul Hoque in B.A. no. 3481/2022 and the accused-petitioners viz. [1] Mubarak Ali and [2] Akbar Ali in B.A. no. 3620/2022 have prayed for their release on bail in connection with Dhula Police Station Case no. 221/2022, registered under Sections 341/326/34, Indian Penal Code [IPC] with Sections 120B/302, IPC added later on.

3. The accused-petitioner viz. Mainul Hoque in B.A. no. 3481/2022 was arrested and thereafter, produced before the Court of learned Chief Judicial Magistrate, Darrang, Mangaldai [Assam] on 08.10.2022 and on being so produced, he was remanded to custody. Since 08.10.2022, the accused-petitioner viz. Mainul Hoque in B.A. no. 3481/2022 is in custody. The accused-petitioners viz. [1] Mubarak Ali and [2] Akbar Ali in B.A. no. 3620/2022 were arrested and thereafter, produced before the Court of learned Chief Judicial Magistrate, Darrang, Mangaldai [Assam] on 17.10.2022 and on being so produced, they were remanded to custody. Since 17.10.2022, the accused-petitioners viz. [1] Mubarak Ali and [2] Akbar Ali in B.A. no. 3620/2022 are in custody.

4. The informant in the First Information Report [FIR], lodged on 01.10.2022, had *inter alia* alleged that when his son, Hasem Ali was on his way home by riding a motor-cycle at around 08-30 p.m. on 30.09.2022, the three accused persons named in the FIR viz. [i] Md. Mainul Hogue the accused-petitioner in B.A. no. 3481/2022; [ii] Sultan Ali; and [iii] Hafizur Rahman waylaid him and assaulted him by sharp weapons. Other than the accused-petitioner viz. Md. Mainul Hoque the two accused-petitioners viz. [1] Mubarak Ali and [2] Akbar Ali in B.A. no. 3620/2022 are not named in the FIR.

5. Immediately after the incident of assault, Hasem Ali was admitted to the hospital on 01.10.2022 and during the course of treatment, he breathed his last on 06.10.2022. After the death of Hasem Ali [since deceased], the offences under Section 302, IPC and Section 120B, IPC have been added in Dhula Police Station Case no. 221/2022.

6. The Post-Mortem Examination [PME] on the dead body of the deceased was performed on 06.10.2022 at the Gauhati Medical College & Hospital [GMCH]. The PME report has reported 4 [four] injuries on the person of the deceased. As per the PME report, the death of the deceased was due to coma as a result of injuries sustained over the head, as described therein. All injuries are found ante-mortem in nature and caused by blunt force impact.

7. The materials in the case diary go to indicate that at the time of the alleged incident, Hasem Ali [since deceased] was riding a motor-cycle with one lady companion as pillion rider. The materials in the case diary further go to indicate that Hasem Ali [since deceased] was intercepted by the two persons viz. [1] Rafikul Islam @ Babu and [2] Idrish Ali on the road at Islampur by seeing him moving with the lady from a family known to them. By keeping Hasem Ali [since deceased] and the lady companion alongside with them, restraining them from moving, the said two persons called the family members of the lady companion accompanying Hasem Ali [since deceased]. On receipt of the information, the family members of the lady came to the place of occurrence. The accused-petitioner viz. Mainul Hoque in B.A. no. 3481/2022 was the father of the lady. The materials in the case diary also go to indicate that Hasem Ali [since deceased] was initially restrained in the house of Hamidur Rahman by

tying him with a pole. The accused petitioners in B.A. no. 3620/2022 are the sons of Hamidur Rahman. Eye-witness accounts are to the effect that both the accused-petitioners in B.A. no. 3620/2022 had severely assaulted Hasem Ali [since deceased] who was tied with the pole causing serious injuries on him. Thereafter, Hasem Ali [since deceased] was handed over to the family members of the lady, who were led by the accused-petitioner in B.A. no. 3481/2022 i.e. Mainul Hoque. The eye-witness accounts also show that Hasem Ali was thereafter, again seriously assaulted by the group led by Mainul Hoque.

8. Having regard to the manner in which Hasem Ali was assaulted by three accused-petitioners herein, this Court is not inclined to extend the benefit of bail of the three accused-petitioners herein though a submission is made on behalf of the learned counsel for the accused-petitioners that their case may be considered on the basis of their length of detention. Consequently, the two bail applications preferred by the three accused-petitioners viz. [1] Mainul Hoque, [2] Mubarak Ali and [3] Akbar Ali stand rejected.

JUDGE

Comparing Assistant