

GAHC010267962022



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

Case No. : AB/3811/2022

RAMEN BORO @ RAMEN MODAHI AND 2 ORS.
S/O SARAT MODAHI,
R/O GORCHUK,
P.O. AND P.S.- GORCHUK,
GUWAHATI- 25, DIST.- KAMRUP (METRO) ASSAM.

2: ASHAR UDDIN
S/O HAZARAT ALI

R/O SONAIGHULI

P.O.- SAWKUCHI
P.S.- DISPUR
GUWAHATI- 781040
DIST.- KAMRUP (METRO) ASSAM.

3: AJIT RABHA
S/O PANDAV RABHA

R/O GERUAPARA

P.O.- TAMULPUR
P.S.- TAMULPUR

DIST.- TAMULPUR
BTR
ASSAM

VERSUS

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

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 03-02-2023

1. Heard Mr. B.K. Mahajan, learned counsel for the petitioners namely, [1] Ramen Boro @ Ramen Modahi [2] Ashar Uddin and [3] Ajit Rabha and Mr. B. Sharma, learned Addl. P.P. for the State.

2. The petitioners have filed an application under Section 438 Cr.P.C. with prayer for pre-arrest bail as they are apprehending arrest in connection with Basistha P.S. Case No. 1063/2022 under Sections 143/147/447/326/384/307 IPC. The petitioners have also prayed for bail on the ground of parity as in Case No. AB 73/2023 Faruk Ali Khan was granted bail under Section 438 Cr.P.C.

3. I have given my anxious consideration to the submissions at the Bar. The FIR unfolds that on 17.12.2022 at about 6:30 PM, while the informant Abu Bakkar Al Hussain along with his mother, aunt, father and few other family members went to the plot of land at Dag No. 990 situated at Sawkuchi, at that time 50 to 100 miscreants who were masked entered into their premises and assaulted them with dangerous weapons like dao, bamboo, dagger, sword and other sharp weapons. The informant's mother and aunt sustained injuries on their head. They started bleeding profusely. All the injured persons were knocked unconscious by the injuries sustained by them. The miscreants then robbed them of mobile, gold chain, gold ornaments and an amount of Rs. 50,000/- and the miscreants also threatened the petitioners with dire-consequences.

4. It is submitted on behalf of the petitioners that the FIR is contradictory. The petitioner Nos. 2 and 3 are named in the FIR and the petitioner No. 1 is not named in the FIR. It is also

submitted that in the body of the FIR it is mentioned that all the miscreants were masked, but surprisingly the petitioner Nos. 2 and 3 were named in the FIR.

5. The fact of the matter is that the informant is nephew of the accused No. 1 Altab Hussain and informant's father are co-pattadars of land covered under Dag No. 990 mentioned in the FIR and there was a boundary dispute regarding the afore-mentioned plot of land. Altab Hussain in fact lodged an FIR against the family members of the present informant i.e. Abu Bakkar Al Hussain and a Basistha P.S. Case No. 1861/2021 was registered against the family members of the informant. The father of the informant Iftikar Hussain executed Irrecoverable General Power of Attorney in favour of the accused Nos. 5 and 6 regarding the afore-mentioned land.

6. It is apparent from the submissions at the Bar that there is a prevalent land dispute between both the parties. The ground of parity cannot be considered in this case. The Power of Attorney was executed in favour of the accused No. 5 Faruk Ali Khan and the accused No. 6 Aman Ali by the informant's father and not in favour of the present petitioners. The present petitioners are named in the FIR. I have perused the Case Diary. There are cogent materials in the Case Diary against the petitioners. It appears investigation relating to the present petitioners may be adversely affected if the present petitioners are insulated by an order of pre-arrest bail under Section 438 Cr.PC. I have considered the injury report annexed with the Case Diary. At this stage there appears to be no justified ground to extend the privilege of anticipatory bail to the petitioner.

Petition is rejected.

Send back the Case Diary.

JUDGE

Comparing Assistant