

GAHC010271462023



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

Case No. : AB/4124/2023

MD AMIRUL ALI AND 2 ORS
S/O MD. SAMED ALI
R/O MASZID PATTY
P.O. CHAPAKHOWA,P.S. SADIYA
DIST. TINSUKIA, ASSAM

2: MD. WAHID ALI
S/O MD. AMIR ALI
R/O MASZID PATTY

P.O. CHAPAKHOWA

P.S. SADIYA
DIST. TINSUKIA
ASSAM

3: MD. ARSOT ALI
S/O MD.HOSOT ALI
R/O MASZID PATTY

P.O. CHAPAKHOWA

P.S. SADIYA
DIST. TINSUKIA
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS M DAS

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

22.12.2023

Heard Ms. M. Das, learned counsel for the petitioners. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, 1. Md. Amirul Ali, 2. Md. Wahid Ali, and 3. Md. Arsot Ali, who are apprehending their arrest in connection with Sadiya P.S. Case No. 181/2023, under Section 341/354/509/506/363/511/34 of the Indian Penal Code corresponding to G.R. Case No. 262/2023.

The gist of accusation in this case is that on 23.10.2023, one Anu Das Deori lodged an FIR, before the Officer-In-Charge of Sadiya Police Station, *inter-alia*, alleging that, when the daughter of the first informant was returning to her house along with her sisters after watching Puja, some unknown youths unlawfully restrained them and made obscene gesture and attempted to kidnap them.

Thereafter, the said girls informed their parents telephonically and on reaching that spot the parents saw the boys with weapons in their hands, who also threatened the first informant. It is also alleged in the FIR that some of the boys were involved in the offence were apprehended by them and handed over to the police.

Learned counsel for the petitioners submits that the petitioners are not

involved in any manner in the offence alleged in the FIR.

Learned counsel for the petitioners also submitted that apart from Section 354 of the Indian Penal Code, all other offences are bailable offences. She also submits that the petitioners are ready to co-operate in the investigation.

Learned counsel for the petitioners also submitted that the police is searching for the present petitioners and hence, they are apprehending that they may be arrested in connection with the case.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Sadiya P.S. Case No. 181/2023 and has submitted that the police has recorded the statement of the victim girl and her statement under Section 164 of the Code of Criminal Procedure, 1973 has also been recorded and in their statement they have not specifically implicated the present petitioners.

It is further submitted that one of the co-accused, who was arrested by the police has also not named the present petitioners in his statement made before the Investigating Officer.

Learned Additional Public Prosecutor has also submitted that the police had also issued notice under Section 41A of the Code of Criminal Procedure, 1973 to the present petitioners.

I have considered the submission made by the learned counsel for both the sides and perused the materials on record, including the case diary of Sadiya P.S. Case No. 181/2023. Though the Investigating Officer has issued notice under Section 41A of the Code of Criminal Procedure, 1973 to the present petitioners, however, they are still searching for the present petitioners which have created genuine apprehension in the mind of the present petitioners that they may be arrested.

Considering the fact that neither the victim girls nor the arrested co-

accused have named the present petitioners, this Court is of the considered opinion that the custodial detention of the present petitioners may not be necessary for fair completion of the investigation of Sadiya P.S. Case No. 181/2023.

In view of the above, the above named petitioners, are hereby directed to appear before the Investigating Officer of Sadiya P.S. Case No. 181/2023 within a period of 10(ten) days from the date of this order and co-operate in the investigation. If they do so within the stipulated period of time, in the event of their arrest in connection with Sadiya P.S. Case No. 181/2023, the above named petitioners shall be allowed to go on interim bail of Rs. 30,000/- each with a suitable surety of like amount to the satisfaction of the arresting authority, subject to the conditions that:-

(i) the petitioners shall not directly or indirectly make any inducement, threat or promise to the informant or to any other persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court; and

(ii) the petitioners shall co-operate in the investigation.

With the above observation, this bail application is hereby disposed of.

Send back the case diary.

JUDGE

Comparing Assistant