

GAHC010004782024



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

Case No. : AB/74/2024

NURUL HOQUE @ NURUL ISLAM AND 3 ORS
S/O- FIROJ ALI, R/O- AMDHAR, P.S. NILAMBAZAR, DISTRICT- KARIMGANJ,
ASSAM

2: BADRUL HOQUE @ BADRUL ISLAM
S/O- FIROJ ALI
R/O- AMDHAR
P.S. NILAMBAZAR
DISTRICT- KARIMGANJ
ASSAM

3: ZIABUR RAHMAN
S/O- FIROJ ALI
R/O- AMDHAR
P.S. NILAMBAZAR
DISTRICT- KARIMGANJ
ASSAM

4: FIROJ ALI
S/O- LATE JOWAID ALI @ JOID ALI
R/O- AMDHAR
P.S. NILAMBAZAR
DISTRICT- KARIMGANJ
ASSA

VERSUS

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

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

10.01.2024

Heard Mr. A. Ahmed, learned counsel for the petitioners. Also heard Mr. K.K. Das, 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. Nurul Hoque @ Nurul Islam, 2. Badrul Hoque @ Badrul Islam, 3. Ziabur Rahman and 4. Firoj Ali, who are apprehending their arrest in connection with PRC Case No. 17/2024 arising out of Nilambazar P.S. Case No. 141/2023 under Section 341/326/307/34 of the Indian Penal Code.

The gist of accusation in this case is that on 04.09.2023, one Angur Nessa lodged an FIR before the Officer-In-Charge of Nilambazar Police Station, against 6(six) named accused and 2(two)/3(three) other persons not named in the FIR *inter-alia*, alleging that the petitioners assaulted the husband of the first informant by means of a dao and caused grievous injuries on his person and also assaulted some other persons. On receipt of the said FIR, Nilambazar P.S. Case No. 141/2023 was registered and investigation was initiated and ultimately, on completion of investigation, charge-sheet was laid against the present petitioner under Section 120B/341/325/307 of the Indian Penal Code.

Learned counsel for the petitioners has submitted that the petitioners had earlier approached the Court of learned Additional Sessions Judge, Karimganj by preferring an application under Section 438 of the Code of Criminal Procedure,

1973, however, the same was rejected on the ground that by the time the petitioners preferred the said application, charge-sheet was already laid against them.

Learned counsel for the petitioners has also submitted that the Trial Court has issued summons against all the present petitioners and the next date is fixed on 19.02.2024 in PRC Case No. 17/2024.

Learned counsel for the petitioners has also submitted that as the Committal Court is the Court of learned Chief Judicial Magistrate, Karimganj and as one of the sections under which the charge-sheet has been laid is Section 307 of the Indian Penal Code, the maximum punishment for which is life imprisonment, the Committal Court may not grant bail to the present the petitioner due to the embargo of Section 437 (1)(i) of the Code of Criminal Procedure, 1973 read with Section 209(a) of the said Code. As the Court of learned Chief Judicial Magistrate, Karimganj is only a Committal Court with limited powers, it could be left with no other options but to remand the present petitioners in the event of their appearance before the said Court to the custody. Hence, the petitioners are apprehending that they may be detained even if they appear before the Committal Court in pursuant to the summons received by them.

Learned counsel for the petitioners has also submitted that prior to the lodging of the instant application by the first informant, the petitioner No. 1, Nurul Hoque @ Nurul Islam had on 24.03.2023 lodged an FIR against the husband of the first informant in which case the charge-sheet has already been laid and summons have been issued against the accused persons.

It is submitted by the learned counsel for the petitioners that the instant case has been lodged when there was an altercation between the present

petitioners and the husband of the informant and due to the intervention of the public, the husband of the first informant sustained injuries in his hand.

Learned counsel for the petitioners has submitted that the petitioners would co-operate in their trial and their custodial detention is not necessary and as there is a case pending against the husband of the first informant also, there is unlikelihood that any of the witnesses from any side would be won over by either of the side and therefore, there is no justification to keep them in custody during the trial.

Learned Additional Public Prosecutor opposed the prayer for grant of bail to the present petitioners on the ground that since Section 307 of the Indian Penal Code is also involved in this case and only summons have been issued against the present petitioners, hence no apprehension of arrest is there of the present petitioners.

However, considering the submissions made by the learned counsel for the petitioners as well as learned Additional Public Prosecutor, this Court is of the considered opinion that though in this case summons has been issued against the present petitioners which at the first look may not give impression that there is any apprehension of petitioners getting arrested, however, if we consider the fact that charge-sheet has been laid *inter-alia*, under Section 307 of the Indian Penal Code also, which is exclusively triable by Court of Sessions, and for which the maximum punishment prescribed is life imprisonment, hence, due to the embargo laid down in Section 437(1)(i) and 209(a) of the Code of Criminal Procedure, 1973 the Committal Court which is the Court of learned Chief Judicial Magistrate, Karimganj may not be in a position to grant bail to the present petitioners even if they appear before the said Court in pursuant to the summons received by them. Hence, the apprehension raised by the present

petitioners of getting detained appears to be genuine.

In view of the above discussion, this anticipatory bail application is hereby disposed of with a direction that the present petitioners shall appear before the Court of learned Chief Judicial Magistrate, Karimganj on 19.02.2024 in compliance of the summons received by them and in the event of their appearance before the Committal Court, the said Court shall allow the above named petitioners to go on 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 co-operate in the trial and shall appear before the Trial Court as and when so required by the Trial Court; and

(ii) 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 deposing against the petitioners in the pending trial against them.

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

JUDGE

Comparing Assistant