

GAHC010008392024



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

**Case No. : Bail Appln./141/2024**

ABUL HASHIM AND 8 ORS  
S/O SINARUDDIN  
R/O VILL- MOWAMARI  
P.S. KHARUPETIA  
DIST. DARRANG, ASSAM

2: SAFIUR RAHMAN  
S/O ATAB ALI  
R/O VILL- MOWAMARI  
P.S. KHARUPETIA  
DIST. DARRANG  
ASSAM

3: SAHIYAL IMRAN  
S/O ABDUL HASHIM  
R/O VILL- MOWAMARI  
P.S. KHARUPETIA  
DIST. DARRANG  
ASSAM

4: SAMSUDDIN  
S/O ATAB ALI  
R/O VILL- MOWAMARI  
P.S. KHARUPETIA  
DIST. DARRANG  
ASSAM

5: SABR ALI  
S/O LATE ABDULLA  
R/O VILL- MOWAMARI  
P.S. KHARUPETIA  
DIST. DARRANG  
ASSAM

6: MUSTAFA KAMAL  
S/O MUSLIMUDDIN  
R/O VILL- MOWAMARI  
P.S. KHARUPETIA  
DIST. DARRANG  
ASSAM

7: ATIKUL ISLAM  
S/O ABUL HASIM  
R/O VILL- MOWAMARI  
P.S. KHARUPETIA  
DIST. DARRANG  
ASSAM

8: ANOWAR HUSSAIN  
S/O SURHAB ALI  
R/O VILL- MOWAMARI  
P.S. KHARUPETIA  
DIST. DARRANG  
ASSAM

9: ASADUL HOQUE  
S/O DULAL HUSSAIN  
R/O VILL- MOWAMARI  
P.S. KHARUPETIA  
DIST. DARRANG  
ASSA

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR M HOQUE**

**Advocate for the Respondent : PP, ASSAM**

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

**ORDER**

**Date : 23.01.2024**

Heard Mr. M. Hoque, learned counsel for the petitioners. Also heard Mr. K. Baishya, learned Additional Public Prosecutor for the State as well as Ms. G. Deka, learned counsel for the informant.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, *1. Abul Hashim, 2. Safiur Rahman, 3 Sahiyal Imran 4. Samsuddin Ahmed, 5. Sabar Ali, 6. Mustafa Kamal, 7. Atikul Islam and 8. Anowar Hussain* who are detained behind the bars since 25.10.2023 (for last 91 days) and the petitioner No. 9, namely, *Asadul Hoque* has been detained behind the bars since 19.11.2023 (for last 65 days) in connection with Kharupetia P.S. Case No. 204/2023 under Sections 120B/325/306/302/379 of the Indian Penal Code.

The gist of accusation in this case is that on 24.10.2023, one Abdul Malik had lodged an FIR before the Officer-in-Charge of the Kharupetia Police Station, inter-alia, alleging that on 24.10.2023 at about 5.00 am in the morning when the brother of the first informant, namely, Abu Jahed @ Ghariand one Malia Khatun went to attend a meeting called by Abul Hasim in connection with a dispute regarding possession of a landed property situated at Kharupetia town Ward No. 7, the accused persons named in the FIR assaulted both the above named persons namely Abu Jahed and Malia Khatun with lathi, rods, stones etc. resulting in instant death of both the above named persons.

The petitioners have earlier filed Bail Application No. 4470/2023 which was rejected after perusal of the case diary. However, the learned counsel for the

petitioners has submitted that the petitioners No. 1 to 8 have been detained behind the bars for last 91 days and, therefore, have already completed the statutory period of detention which is only 90 days in this case. Hence, the learned counsel for the petitioners has prayed for grant of default bail to the petitioners No. 1 to 8 under Section 167(2) of the Code of Criminal Procedure, 1973.

As regards petitioner No. 9 is concerned, it is submitted by the learned counsel for the petitioners that one of the co-accused in this case, namely, Jamal Uddin had already been granted anticipatory bail by a Co-ordinate Bench of this Court and as no specific materials are there against the petitioner No. 9 and as he also has completed 65 days detention, hence, considering the period of detention, he may be allowed to go on bail.

On the other hand, the learned Additional Public Prosecutor has produced the case diary of Kharupetia P.S. Case No. 204/2023 and has submitted that though the petitioners No. 1 to 8 have already completed 91 days of detention, however, charge-sheet is yet to be filed, and therefore, he has no objections as regards the prayer for default bail of petitioners No. 1 to 8. However, he has opposed the grant of bail to the petitioner No. 9 on the ground that incriminating materials are there against the said petitioners.

On the other hand, Ms. G. Deka, learned counsel for the informant has vehemently opposed the grant of bail to the petitioners on the ground that two persons, namely, Abu Jahed and Malia Khatun have been brutally killed by the present petitioners and there are sufficient incriminating materials against the present petitioners and that releasing them on bail would prejudice the safety of the informants.

I have considered the submissions made by the learned counsel for the parties and have perused the materials on record including the case diary of Kharupetia P.S. Case No. 204/2023.

It appears from record that for the offences involved in this case, the maximum statutory period of detention under Section 167(2) is 90 days and as the petitioners No. 1 to 8 have already completed the maximum statutory period of detention, they are entitled to get default bail in this case.

As regards, the petitioner No. 9 is concerned, it appears from the case diary that the Investigating Officer has recorded the statement of the relevant witnesses and considering the fact that the other co-accused will no longer be detained in this case and also considering the fact that the petitioner No. 9 has also completed 65 days of detention, his further custodial detention may not be necessary, if he otherwise cooperates in the investigation.

For the reasons mentioned above, the above named petitioners are hereby allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand) only each with two sureties of like amount to the satisfaction of the learned Chief Judicial Magistrate, Darrang, subject to the conditions:-

- (i) That the petitioners shall cooperate in the investigation and shall appear before the Investigating Officer as and when so required by the Investigating Officer for the sake of fair investigation;
- (ii) That the petitioners shall not directly or indirectly make any inducement, threat or promise to any other persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts before

the Investigating Officer.

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

Send back the case diary.

**JUDGE**

**Comparing Assistant**