

GAHC010018752024



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

Case No. : AB/213/2024

ATAB ALI AND 9 ORS
S/O LATE SINARUDDIN
A RESIDENT OF VILL- MOWAMARI, P.O. AND P.S. KHARUPETIA
DIST. DARRANG, ASSAM

2: MUSAHIDUR RAHMAN
S/O MUSLIMUDDIN
A RESIDENT OF VILL- MOWAMAIR
P.O. P.S. KHARUPETIA
DIST. DARRANG
ASSAM

3: SAHAR ALI
S/O LATE ABDULLA
A RESIDENT OF VILL- MOWAMARI
P.O. AND P.S. KHARUPETIA
DIST. DARRANG
ASSAM

4: IKRAMUL HOQUE
S/O ATAB ALI
A RESIDENT OF VILL- MOWAMARI
P.O. AND P.S. KHARUPETIA
DIST. DARRANG
ASSAM

5: JOBBAR ALI
S/O LATE ABDULLA
A RESIDENT OF VILL- MOWAMARI
P.O. AND P.S. KHARUPETIA
DIST. DARRANG
ASSAM

6: SORHAB ALI

S/O LATE TALEB ALI
A RESIDENT OF VILL- MOWAMARI
P.O. AND P.S. KHARUPETIA
DIST. DARRANG
ASSAM

7: JAHER ALI
S/O MUSLIMUDDIN
A RESIDENT OF VILL- MOWAMARI
P.O. AND P.S. KHARUPETIA
DIST. DARRANG
ASSAM

8: INAMUL HOQUE
S/O ATAB ALI
A RESIDENT OF VILL- MOWAMARI
P.O. AND P.S. KHARUPETIA
DIST. DARRANG
ASSAM

9: SALEAH AHMED @ SALEH AHMED
S/O JAHER ALI
A RESIDENT OF VILL- MOWAMARI
P.O. AND P.S. KHARUPETIA
DIST. DARRANG
ASSAM

10: MAHIBAR RAHMAN
S/O LATE HASEN ALI
A RESIDENT OF VILL- MOWAMARI
P.O. AND P.S. KHARUPETIA
DIST. DARRANG
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A I HUSSAIN

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 29.02.2024

1. Heard Mr. M. A. I. Hussain, learned counsel for the petitioners. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor for the State as well as Mr. B. Prasad, learned counsel for the informant.

2. This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, *1. Atab Ali, 2. Musahidur Rahman, 3. Sahar Ali, 4. Ikramul Hoque, 5. Jobbar Ali, 6. Sorhab Ali, 7. Jaher Ali, 8. Inamul Hoque, 9. Saleah Ahmed @ Saleh Ahmed and 10. Mahibar Rahman*, who are apprehending their arrest in connection with Kharupetia P.S. Case No. 204/2023 under Sections 120B/302/326/325/379 of the Indian Penal Code.

3. The gist of accusation in this case is that on 24.10.2023, one Abdul Malek had lodged an FIR before the Officer-in-Charge of Kharupetia Police Station, *inter alia*, alleging that on that day i.e., 24.10.2023 at about 5 a.m. in the morning, when the brother of the first informant, namely, Abu Jaher @ Ghari and one Mabiya Khatun went to attend a meeting called by Abul Hasim regarding a dispute pertaining to position of a landed property situated at Kharupetia Town, Ward No. 7, the accused persons named in the FIR along with others assaulted both the persons, namely, Abu Jaher and Mabiya Khatun with lathi, rod, stones, etc. resulted in their instant death at the spot. It is also alleged in the FIR that many other persons were also seriously injured in the incident.

4. Learned counsel for the petitioners has submitted that the petitioners are not involved in any manner in the offence alleged in the FIR and, therefore,

they are not even named in the FIR. However, they might have been implicated by some of the family members of the first informant and, therefore, the Police are searching for them. It is submitted by the learned counsel for the petitioners that there was a land dispute between the deceased and the family members of the informant and, therefore, all the family members of the named accused are not tried to be implicated in the instant case by making concocted allegations against them.

5. It is also submitted by the learned counsel for the petitioners that, in the meanwhile, the accused persons named in the FIR were arrested and have already been granted bail after completion of statutory period. It is also submitted by the learned counsel for the petitioners that one Jamal Uddin, who was also implicated by some of the witnesses, has been granted anticipatory bail by a Co-ordinate Bench of this Court by order dated 18.12.2023 passed in AB No. 4121/2023.

6. On the other hand, learned Additional Public Prosecutor has opposed the grant of anticipatory bail to the above named petitioners on the ground that some of the injured witnesses have implicated the present petitioners in this case and their custodial interrogation is necessary for fair of investigation of Kharupetia P.S. Case No. 204/2023.

7. Mr. B. Prasad, learned counsel for the informant has also opposed the grant of anticipatory bail to the above named petitioners on the ground that two of the victims were brutally assaulted and killed by a mob that included the present petitioners. He has also produced the photographs of the injured victims before the Court.

8. I have considered the submissions made by the learned counsel for both

the sides and have perused the materials available on record, including the case diary of Kharupetia P.S. Case No. 204/2023 which was produced by the learned Additional Public Prosecutor.

9. On perusal of the case diary, it appears that none of the above named ten petitioners were initially named in the FIR which was lodged by the informant on 24.10.2023, though, later on some of the witnesses whose statements were recorded on 05.11.2023 and thereafter on 05.12.2023 mentioned their names along with other accused persons.

10. It also appears from record that, in the meanwhile, all the eight accused persons named in the FIR have been granted bail by this Court and one another person against whom some of the witnesses have made implicating statements have been granted anticipatory bail by a Co-ordinate Bench of this Court. It also appears from case diary that initially when the statement of witnesses were recorded by the Investigating Officer on 24.10.2023, the names of the present petitioners were not implicated by the witnesses. It was only later on that the names have been mentioned by some of the witnesses. Moreover, the Investigating Officer has, in the meanwhile, recorded the statements of most of the relevant witnesses, hence, this Court is of considered opinion that if the above named petitioners cooperate with the Investigating Officer, their custodial detention may not be necessary for fair completion of investigation of Kharupetia P.S. Case No. 204/2023.

11. In view of above, the petitioners, namely, 1. *Atab Ali*, 2. *Musahidur Rahman*, 3. *Sahar Ali*, 4. *Ikramul Hoque*, 5. *Jobbar Ali*, 6. *Sorhab Ali*, 7. *Jaher Ali*, 8. *Inamul Hoque*, 9. *Saleah Ahmed @ Saleh Ahmed* and 10. *Mahibar Rahman* are here by directed to appear before the Investigating Officer of Kharupetia P.S. Case No. 204/2023 within a period of ten days from the date of

this order and cooperate in the investigation. If they do so within the stipulated period of time, in the event of their arrest, in connection with Kharupetia P.S. Case No. 204/2023, the above named petitioners shall be allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand) only each with two securities of like amount, subject to the satisfaction of the arresting authority with the following conditions:-

1. That the above named 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 the fair completion of the investigation
2. That the above named petitioners shall not directly or indirectly make any inducement, threat or promise to any person or 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 Police.

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

JUDGE

Comparing Assistant