

GAHC010113442024



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

Case No. : AB/1479/2024

MOZAFFAR RAHAMAN
S/O MOHAMMED ALI,
VILLAGE RAJABALA BHALUK KANDI,
PO PATAKATA, PS SOUTH SALMARA, DIST SOUTH SALMARA
MANKACHAR, ASSAM 783127

2: ZAKIR HUSSAIN
S/O MOTIOR RAHMAN
RESIDENT OF VILLAGE KOLABARI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM 783127

3: ALOM HUSSAIN
S/O ABDUL SALAM.
VILLAGE RAJABALA BHALUK KANDI

PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM 783127

4: MOTIAR RAHMAN
S/O MOHAMMAD ALI

VILLAGE RAJABALA BHALUK KANDI

PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM 783127

5: MOSTAFIZUR MONIJ

S/O MOZAFFAR RAHMAN
VILLAGE RAJABALA BHALUK KANDI

PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM 78312

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. SURAJIT DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 18.07.2024

- 1.** Heard Mr. H. R. A. Choudhury, learned counsel for the petitioners. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, (1) Mozaffar Rahaman, (2) Zakir Hussain, (3) Mostafizur Monij, (4) Motiar Rahman, and (5) Alom Hussain who are apprehending their arrest in connection with South Salmara P. S. Case No. 105/2024, under Section 147/148/326/342/427/506 of the Indian Penal Code.
- 3.** The gist of the accusation in this case is that on 21.05.2024, one Ali Hussain Sarkar had lodged an FIR before the Officer-in-Charge of South Salmara Police Station, Inter-Alia, alleging that on 19.05.2024, his son, namely,

Rehan Alom Sarkar, aged about 14 years, informed him over telephone that the petitioner Nos. 1 and 2 had dragged him forcefully to their house and had assaulted him after tying his hands and legs with rope. As a result of assault, the son of the informant sustained grievous injuries on his person.

4. The learned counsel for the petitioners has submitted that on the earlier instance, when the case diary was called for and was available before this Court, it came to light that the victim has implicated only petitioner Nos. 1 and 2 and made no implicating statement against the remaining petitioners.

5. The learned counsel for the petitioners has also submitted that the allegations made in the FIR are not true. It is submitted that in fact the victim boy attempted to commit theft in the tank of the petitioner No.1 and when he was apprehended and police was informed, however, before the arrival of the police, the local public had assaulted the victim boy.

6. On the other hand, learned Additional Public Prosecutor has produced the case diary of South Salmara P. S. Case No.105/2024 and has submitted that in his statement, the victim boy has implicated the petitioner Nos. 1 and 2 of having assaulted him. However, no implications are there against the remaining petitioners.

7. The learned Additional Public Prosecutor has also submitted that from the medical report of the victim, it appears that he suffered dislocation of finger joints and the injuries sustained by the victim is grievous in nature and he accordingly, opposed grant of bail to the petitioner Nos. 1 and 2.

8. I have considered the submissions made by learned counsel for the parties and have perused the materials available on record, including the case

diary of South Salmara P. S. Case No.105/2024.

9. On perusal of the case diary, it appears that there are sufficient incriminating material against petitioner Nos. 1 and 2 and hence, this Court is of considered opinion that they are not entitled to get the benefit of a favourable order under Section 438 of the Code of Criminal Procedure, 1973.

10. Accordingly, the prayer for bail of petitioner Nos. 1 and 2 is hereby rejected.

11. However, as regards other petitioners, i.e., petitioner Nos. 3) Mostafizur Monij, (4) Motiar Rahman, and (5) Alom Hussain, as there is no implicating materials in the case diary against them, the said petitioners, namely petitioner Nos. (3) Mostafizur Monij, (4) Motiar Rahman, and (5) Alom Hussain are hereby directed to appear before the Investigating Officer of South Salmara P. S. Case No.105/2024 within a period of 10 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 South South Salmara P. S. Case No.105/2024, the above-named petitioners i.e., petitioner Nos. (3) Mostafizur Monij, (4) Motiar Rahman, and (5) Alom Hussain) shall be allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only), each with one surety of like amount to the satisfaction of the arresting authority subject to the following conditions:

i. That the petitioners shall co-operate in the investigation.

ii. That the petitioners shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case, so as to dissuade such

person from disclosing such facts of the case before the Investigating Officer.

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

13. Send back the case diary.

JUDGE

Comparing Assistant