

GAHC010123612024



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

Case No. : AB/1617/2024

SHAHADAT ALI
S/O JOSHU @ ZASHU SHEIKH, VILL-A.M. CO. ROAD, P.S. AND DIST-
DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. N J DUTTA, MR A HAI

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

07.08.2024

Heard Mr. N.J. Dutta, learned counsel for the applicant. Also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 438 Cr.P.C. is preferred by applicant, namely, Shahadat Ali, who has been apprehending arrest in connection with Dhubri P.S. Case No.73/2024 under Section 143/302 IPC, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of one FIR, lodged by one Taijuddin Sk., on 11.03.2024.

4. The essence of allegation made in the aforesaid FIR is that on 10.03.2024, at about 9:20 a.m., on the instigation of Shahadat Ali, Najibul Islam, Hasibul Islam, Joshu Sheikh, Nazira Bibi, Ali Hussain, Safiqul Islam @ Mintu and others, one Sabur Ali closed the road, being used by the informant for ingress/egress from his house. Then, the father of the informant, Md. Sonaulah Sheikh inquired about closing of the road from Sabur Ali and then, as per direction of Shahadat Ali, Sabur Ali assaulted his father with stick on his neck. As a result, the father of the informant sat down on the ground and then, the other accused persons also administered blows with fist on his father and consequently his father became unconscious and fell down on the ground. Thereafter, he raised alarm and then the nearby villagers arrived at there and taken his father to the Dhubri Civil Hospital, where the Doctors declared his father brought dead.

5. Mr. Dutta, learned counsel for the applicant submits that the applicant did not take part in the said offences and the only allegation against him is that he had instigated the accused No.1 and further, Mr. Dutta submits that after registration of the FIR several months elapsed and the I.O. got sufficient time for investigation and therefore, Mr. Dutta has contended to allow the petition.

6. Whereas, Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, has produced the case diary before this Court and submits that the investigation is going on and the I.O. has collected materials against the applicant and therefore, Mr. Lahkar contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Lahkar, learned Additional P.P.

8. It appears that this is the 2nd pre-arrest bail application preferred by the applicant and the first one, being AB No.955/2024, was dismissed by this Court vide order dated

06.06.2024, after perusing the case diary. It is well settled by a catena of decisions of Hon'ble Supreme Court that 2nd bail application is maintainable only on the ground of change of circumstance in favour of the applicant/petitioner. Reference in this case can be made to the decision of Hon'ble Supreme Court in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr.** reported in **(2004) 7 SCC 528** and also in the case of **State of Tamil Nadu v. S.A. Raja** reported in **(2005) 8 SCC 380**.

9. In the case in hand, Mr. Dutta, learned counsel for the applicant has failed to show any change of circumstance in his favour after dismissal of the first application on 06.06.2024, though Mr. Dutta submits that after registration of the FIR several months have elapsed and the I.O. got sufficient time for investigation, yet the said ground, to the considered opinion of this Court cannot be a change circumstance in favour of the applicant. Moreover, the issue raised by Mr. Dutta, learned counsel for the applicant that the applicant had not instigated the accused No.1 to the assault the deceased, left this Court unimpressed as this Court in the order dated 06.06.2024, has recorded a clear finding that the I.O. has collected sufficient incriminating materials to show the complicity of the present applicant with the offence alleged in the FIR. That being so, the aforesaid issue cannot be re-opened.

10. Further, it appears from the case diary that the investigation is going on and there is sufficient material to show the complicity of the applicant with the offence alleged.

11. In the result, I find no merit in this application and accordingly, the same stands dismissed.

12. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant