

GAHC010128042024



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

Case No. : AB/1681/2024

NURJAMAL ALI AND ANR
S/O MOHAMMAD AZMAT ALI, R/O VILL- CHIKNIBARI, P.S.-TAMULPUR,
PIN-781376, DIST- TAMULPUR (ASSAM)

2: NAJMUL HUSSAIN
S/O NUR JAMAL ALI
R/O VILL- CHIKNIBARI
P.S.-TAMULPUR
PIN-781376
DIST- TAMULPUR (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

19.07.2024

- 1.** Heard Mr. M. Dutta, learned counsel for the petitioners. Also heard Mr. R.R. Kaushik, learned Additional Public Prosecutor appearing for

the State of Assam.

2. This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, 1. Nurjamal Ali and 2. Najmul Hussain, who are apprehending their arrest in connection with Tamulpur P.S. Case No. 104/2024 under Section 325/302/34 of the Indian Penal Code, 1860.

3. The gist of accusation in this case is that on 21.05.2024, one Abdul Hakim Ali had lodged an FIR, before the Officer-In-Charge of Rangia Police Station, *inter alia*, alleging that the petitioners had quarrelled with the elder sister of the informant and they hit her with a plastic chair causing grievous injury on her and ultimately, she was admitted to ICU at Swasti Nursing Home.

4. The learned counsel for the petitioners has submitted that on lodging of the aforesaid FIR, Tamulpur P.S. Case No. 104/2024 was registered under Section 325/34 of the Indian Penal Code, 1860.

5. It is also submitted by the learned counsel for the petitioners that both the petitioners surrendered before the Court and they were allowed to go on bail by the Court of learned Additional Chief Judicial Magistrate, Baksa, Mushalpur on 29.05.2024. However, it is submitted by the learned counsel for the petitioners that thereafter, the injured succumbed to her injury and Section 302 was added in Tamulpur P.S. Case No. 104/2024 and thereafter, the police are again searching for the petitioners and therefore, they have again approached this Court by filing the instant anticipatory bail apprehending their arrest in this case.

6. On the other hand, the learned Additional Public Prosecutor has submitted that from the case diary it appears that the bail order granted by the learned Additional Chief Judicial Magistrate, on 29.05.2024 in Tamulpur P.S. Case No. 104/2024 has not yet been cancelled and during the subsistence of the said bail orders, the petitioners may not be arrested again.

7. I have considered the submissions made by the learned counsel for the petitioners as well as learned Additional Public Prosecutor as well as I have perused the case diary of Tamulpur P.S. Case No. 104/2024.

8. It appears that both the above-named petitioners are already on bail which was granted to them by the learned Additional Chief Judicial Magistrate, Baksa, Mushalpur on 29.05.2024, hence, the apprehension of arrest of the above-named petitioners does not have any valid basis as the above-named petitioners cannot be arrested again during the subsistence of the aforesaid bail order. They may be arrested in Tamulpur P.S. Case No. 104/2024, only after cancellation of the bail granted to them by the learned Additional Chief Judicial Magistrate, Baksa, Mushalpur.

9. In view of above, this anticipatory bail application is disposed of with an observation that at present there is no apprehension of the above-named petitioner of getting arrested in connection with Tamulpur P.S. Case No. 104/2024.

JUDGE

Comparing Assistant