

GAHC010128882024



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

Case No. : AB/1655/2024

JAHIR UDDIN AND 7 ORS
S/O LT MOKSED ALI, R/O SAGUNMARI PT-IV, P.O. AND P.S-BILASHIPARA,
DIST-DHUBRI

2: NISHAN ALI
S/O SARBESH ALI @ DARABESH ALI
R/O SAGUNMARI PT-IV
P.O. AND P.S-BILASHIPARA
DIST-DHUBRI

3: AJAM ALI
S/O ADAM ALI
R/O SAGUNMARI PT-III
P.O. AND P.S-BILASHIPARA
DIST-DHUBRI

4: MAHIR UDDIN
S/O ADAM ALI
R/O SAGUNMARI PT-III
P.O. AND P.S- BILASHIPARA
DIST-DHUBRI

5: MANOWAR HUSSAIN
S/O ABDUL GAFUR
R/O SAGUNMARI PT-IV
P.O. AND P.S-BILASHIPARA
DIST-DHUBRI

6: AKBOR ALI
S/O KURAN ALI
R/O SAGUNMARI PT-IV
P.O. AND P.S-BILASHIPARA
DIST-DHUBRI

7: JANIK ALI @ HAZRAT ALI
S/O JOHIR UDDIN
R/O SAGUNMARI PT-IV
P.O. AND P.S-BILASHIPARA
DIST-DHUBRI

8: JAKIR ALI @ JAKIR HUSSAIN
S/O JOHIR UDDIN
R/O SAGUNMARI PT-IV
P.O. AND P.S-BILASHIPARA
DIST-DHUBR

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

24.07.2024

Heard Mr HRA Choudhury, learned Senior Counsel for the petitioners, 1) Jahir Uddin, 2) Nishan Ali, 3) Ajam Ali, 4) Mahir Uddin, 5) Manowar Hussain, 6) Akbor Ali, 7) Janik Ali @ Hazrat Ali and 8) Jakir Ali @ Jakir Hussain, and Mr R R Kaushik, learned Additional Public Prosecutor for the State of Assam. Also heard Mr M Hussain, learned counsel appearing on behalf of the informant.

2. The petitioners have filed this application under Section 438 CrPC, with prayer for pre-arrest bail, as they are apprehending arrest in connection with Bilasipara PS Case

No. 109/2024, under Sections 120(B)/302/325/34 of the Indian Penal Code, 1860.

3. It is submitted on behalf of the petitioners that on 02.05.2024, an FIR was lodged against them by the informant, Sukur Ali and again on 12.05.2024, another FIR was lodged in connection with the same case.

4. The learned Additional Public Prosecutor has submitted that the Case Diary has been received, which clearly reflects that both the FIRs are registered as Bilasipara PS Case No. 109/2024.

5. It is submitted on behalf of the petitioners that both the FIRs reflect contradictory allegations.

6. The FIR dated 02.05.2024 lodged by Sukur Ali reflects that on 01.05.2024, at about 09:00 pm, when Sukur Ali's cousin, namely, Asuruddin Sheikh was proceeding towards his house, the present petitioners surrounded him and assaulted him and killed him and flung his body into a nearby canal, near the house of the deceased.

7. It is further alleged that a land dispute is prevailing between the parties and the petitioners have been threatening to eliminate the deceased. On 02.04.2024, the petitioners assaulted the elder brother of the deceased, namely, Nur Amin and also tried to assault the deceased and an ejahar was lodged in connection with this case.

8. On the contrary, the second FIR dated 12.05.2024 lodged by Abdul Hoque, clearly reveals that Asuruddin went to Guwahati for work. Asuruddin had illicit relationship with the daughter-in-law of Fozor Ali (accused No. 2 named in the FIR). Then, Saman

Ali called Asuruddin over phone on 01.05.2024. Thereafter, Asuruddin went missing. Due to the illicit affair between Asuruddin, i.e., the nephew of Abdul Hoque and the daughter-in-law of accused No. 2, the accused persons named in the FIR committed murder of Asuruddin.

9. The learned counsel for the informant has submitted that the second FIR dated 12.05.2024 is a collusive FIR lodged in a clandestine manner by Abdul Hoque, who is the brother-in-law of the accused Abdul Hamid Sheikh @ Hamid Sheikh, to mislead the Court by taking the benefit of second FIR.

10. I have considered the submissions at the Bar with circumspection and I have also perused the Case Diary.

11. The Post-Mortem Report reveals an injury on the left upper eyelid and the opinion of the doctor was that death was due to asphyxia as a result of *ante mortem* drowning.

12. It is submitted on behalf of the petitioners that there are no witnesses and the petitioners cannot be roped in, in connection with a serious offence only on the basis of suspicion.

13. It is submitted that there was a land dispute prevailing between the parties and a civil case is pending between the parties.

14. The learned counsel for the informant and the learned Additional Public Prosecutor has also submitted that a land dispute has surfaced between both the parties.

15. It is true that after the victim went missing, his body was recovered from a canal and strong suspicion rests upon the petitioners due to their existing animosity relating to a land dispute.

16. After scrutinizing the Case Diary, the merits of this case are not brought to the fore.

17. The Case Diary reveals that investigation has progressed to a considerable extent.

18. It appears that custodial interrogation may not be required.

19. Petitioners are local residents and they are willing to cooperate with the remaining part of the investigation. The petitioners have pledged to abide by any stringent conditions, if imposed upon them.

20. Considering all aspects and in view of my foregoing discussions, petition is allowed. In the event of their arrest, the petitioners shall be enlarged on bail of Rs. 50,000/- each, with one surety each of the like amount to the satisfaction of the arresting authority, under the conditions that:-

- i) the petitioners shall appear before the IO within 10 (ten) days from today and cooperate with the investigation,
- ii) the petitioners shall not exercise threats to the witnesses and maintain peace; and
- iii) the petitioners shall not leave the jurisdiction of the Court, without prior permission, till completion of investigation.

On breach of any of the bail conditions, the bail order shall stand cancelled.

21. Bail Application stands disposed of.
22. Send back the Case Diary.

JUDGE

Comparing Assistant