

GAHC010132662024



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

Case No. : AB/1725/2024

OYBAR ALI AND 5 ORS.

S/O LATE NOSER ALI, R/O VILL- SINDURI PART-I, P.S.-AGOMONI, DIST-DHUBRI, ASSAM, PIN-783301

2: KASHEM ALI

S/O KETO SK

R/O VILL- SINDURI PART-I

P.S.-AGOMONI

DIST-DHUBRI

ASSAM

PIN-783301

3: NUR HOSSAIN

S/O AYNAL SK

R/O VILL- SINDURI PART-I

P.S.-AGOMONI

DIST-DHUBRI

ASSAM

PIN-783301

4: MOKBUL HOQUE

S/O AYNAL SK

R/O VILL- SINDURI PART-I

P.S.-AGOMONI

DIST-DHUBRI

ASSAM

PIN-783301

5: ZAKIR HUSSAIN

S/O AYNAL SK

R/O VILL- SINDURI PART-I

P.S.-AGOMONI

DIST-DHUBRI

ASSAM

PIN-783301

6: AMINUR HOQUE
S/O AYNAL SK
R/O VILL- SINDURI PART-I
P.S.-AGOMONI
DIST-DHUBRI
ASSAM
PIN-78330

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. J KALITA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 18.07.2024

1. Heard Mr. J. Kalita, 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) Oybar Ali, (2) Kashem Ali, (3) Nur Hossain, (4) Mokbul Hoque, (5) Zakir Hussain and (6) Aminur Hoque, who are apprehending their arrest in connection with Agomoni P.S. Case No. 33/2024 under Section 143 /147/148/341/447/323/325/326/392 of the Indian Penal Code.

3. The gist of the accusation in this case is that on 07.05.2024, one

Majibor Rahman had lodged an FIR before the Officer-in-Charge of Agomoni Police Station, mentioning the names of 22 accused persons in the FIR, including the present petitioners, *inter-alia*, alleging that on 07.05.2024 at 2.00 a.m. when the informant were sleeping, accused persons named in the FIR had constructed a house over the land of the informant, and when the informant went to a Agomoni Police Station to report about the said fact, in his absence, the accused persons assaulted the family members of the informant, causing serious injuries over their person.

4. It is also alleged that on the way back from the police station, the accused person also restrained the first informant and assaulted him, causing injury over his person.

5. Learned counsel for the petitioners has submitted that the allegations levelled against the present petitioners in the FIR are not true, and in fact, there is civil dispute between the parties.

6. It is submitted that due to the ongoing civil dispute between them, there might be scuffle with the family members of the informant. However, the allegations as levelled in the FIR are not true.

7. On the other hand, learned Additional Public Prosecutor has produced the case diary Agomoni P.S. Case No. 33/2024 and has stated that the witnesses whose statements have been recorded by the Investigating Officer have implicated the petitioners. He has also submitted that one of the injured has sustained grievous injuries and several other injured persons have sustained simple injuries.

8. It is submitted by an learned Additional Public Prosecutor that the

injured witness, namely, Babar Ali had implicate the petitioner Nos. 1, 2, 3 and 4 of having assaulted him and causing him injuries and therefore, he has opposed the grant of bail to the said petitioners.

9. I have considered the submissions made by learned counsel for the rival parties and perused the case diary of Agomoni P.S. Case No. 33/2024.

10. On perusal of the case diary, it appears that several witnesses were injured and one of them also sustained grievous injury. The injured witness have specifically named, petitioner Nos. (1) Oybar Ali, (2) Kashem Ali, (3) Nur Hossain, and (4) Mokbul Hoque, among other accused persons who had assaulted the injured person.

11. However, no specific name of petitioner Nos. (5) Zakir Hussain and (6) Aminur Hoque has been taken by any of the injured witnesses.

12. Considering the fact that there are incriminating materials against the petitioner Nos. (1) Oybar Ali, (2) Kashem Ali, (3) Nur Hossain, and (4) Mokbul Hoque in the case diary, this Court is of considered opinion that they are not entitled to get protection of a favorable order under Section 438 of the Code of Criminal Procedure, 1973.

13. However, as the injured witnesses have not implicated petitioner Nos. (5) Zakir Hussain and (6) Aminur Hoque, both of them are directed to appear before the Investigating Officer of Agomoni P.S. Case No. 33/2024 within a period of 10 days from the date of this order and cooperate in investigation. If they do so within the stipulated period of time, both of them, petitioner Nos. (5) Zakir Hussain and (6) Aminur Hoque 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 of the arresting authority with 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.

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

JUDGE

Comparing Assistant