

GAHC010149692024



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

Case No. : AB/2001/2024

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
ASSA
VERSUS
THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M DUTTA, MR. N BARDOLOI

Advocate for the Respondent : PP, ASSAM, MR F HAQUE(INFORMANT)

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 12.09.2024

- 1)** Heard Mr. M. Dutta, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State of Assam.
- 2)** This bail application is treated as an application under Section 482 of

the BNSS, 2023.

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

4) 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 Rongia Police Station, inter alia, alleging that on 21.05.2024 at about 10.30 AM the accused persons picked a quarrel with the elder sister of the informant and hit her with a plastic chair causing grievous injury on her head as a result of which she was rushed to the Swasti Hospital, Rongia.

5) It is also stated in the FIR that at the time of the lodging of the FIR, the victim was admitted in the ICU department Swasti Hospital, Rongia.

6) It is also stated in the FIR that the victim and her husband were the patient of hypertension.

7) The learned counsel for the petitioners has submitted that there was a quarrel between the petitioner No.2 and the victim's son and after intervention of the family members, the quarrel subsided.

8) It is also submitted by the learned counsel for the petitioners that after the quarrel, the victim had collapsed as she was suffering from hypertension and, therefore, she was rushed to the Hospital, where later on she died.

9) The learned counsel for the petitioners has also submitted that the petitioners had surrendered before the Court on 29.05.2024 and were allowed to go on bail by learned Additional Chief Judicial Magistrate, Mushalpur, Baksa. However, later on at the death of the victim, Section 302 was added to the case and thereafter one application from the Police, the Court of learned Additional

Chief Judicial Magistrate, Musalpur by its order dated 23.07.2024 had cancelled the bail order granted in favor of the petitioners.

10) The learned counsel for the petitioners has submitted that the petitioners are ready to co-operate in the investigation and, therefore, prays for allowing them to go on bail.

11) On the other hand, learned Additional Public Prosecutor has produced the Case Diary of Tamulpur P.S. Case No.104/2024 and has submitted that in the Case Diary, there are incriminating materials against the petitioner No.2 as two of the witnesses stated in their statements before the Investigating Officer that he had assaulted the victim by using Plastic Chair, but he submits that there is no materials against the petitioner No.1 in the Case Diary.

12) I have considered the submissions made by the learned counsel for both the sides and have perused the Case Diary, which was called for in connection with the bail application. As there are no incriminating materials against the petitioner No.1 on the Case Diary, he is entitled to get a favorable order for anticipatory bail in the case. As regard petitioner No.2 is concerned though there are incriminating materials against him, however it appears from record that he was on bail for near about 2 months after the alleged incident and there is no report that he misuse his liberty. During that period, it also appears the Investigating Officer has already examined the relevant witnesses.

13) In such circumstances, if the petitioners co-operate with the Investigating Officer, their custodial interrogation may not be necessary for fair completion of the investigation in Tamulpur P.S. Case No.104/2024.

14) In view of above, both the above named accused petitioners are hereby directed to appear before the Investigating Officer of Tamulpur P.S. Case No.104/2024 and co-operate in the investigation. If they do so and co-operate

in the investigation within the 10 days from the date of this order and if they do so within the stipulated period of time, in the event of their arrest in connection with Tamulpur P.S. Case No.104/2024 they 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 conditions that:-

- (i) The petitioner No.2 shall appear before the Investigating Officer once in every week for next four weeks till the investigation is completed, whichever is earlier.
- (ii) 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 before the Investigating Officer or to any Court.

15) This anticipatory bail application is accordingly disposed of.

16) Send back the Case Diary.

JUDGE

Comparing Assistant