

GAHC010159172023



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

Case No. : AB/2544/2023

MAIZAN AND ANR
W/O MUKSED ALI
R/O IVLL- NO. 3 BORBALA
P.O. BHANGNAMARI
P.S. SIALMARI
DIST. NALBARI, ASSAM
PIN-781126

2: MOTI ALI @ MOTIUR RAHMAN
S/O LT. DAROG ALI
R/O VILL- NO. 3

BORBALA
P.O. BHANGNAMARI
P.S. SIALMARI
DIST. NALBARI
ASSAM
PIN-78112

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A SARMA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

19.02.2024

Heard Mr. S. Choudhury, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Public Prosecutor for the State respondent as well as Mr. N. Rahman, learned counsel for the informant, who is the son of the deceased.

This is an application under Section 438 of the Code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/petitioners, who are apprehending arrest in connection with Sialmari P.S. Case No. 32/2023, under Sections 302/34 of the Indian Penal Code.

The Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioners, Mr. Choudhury, that the accused/petitioners are innocent and they are not at all involved in the alleged offence. It is contended by the petitioners that they are apprehending arrest merely on suspension. After getting the order of interim pre-arrest bail, both the accused/petitioners have already appeared before the I.O. and their statements under Section 161 Cr.P.C. have already been recorded. They are still ready and willing to co-operate with the I.O. in further investigation of this case if they are granted with the privilege of pre-arrest bail and therefore, it is prayed to make the interim pre-arrest bail order absolute.

In this context, the learned Public Prosecutor, Mr. Borthakur, has submitted that the Case Diary is up-dated till 04.01.2024 and the FIR was lodged on 18.05.2023 and till date, the body of the deceased has not yet been recovered, though, a video was circulated in the social media and accordingly, the informant identified the deceased body and thereafter, he lodged the FIR against the petitioners. The Case Diary reveals that the informant suspected that the accused/petitioners had conspired and jointly killed the informant's father, as the petitioner No.1/wife of the deceased and the petitioner No.2, who was working as a servant in the house of the petitioner No.1. Apart from suspicion, neither the other materials nor the dead body of the deceased has been recovered by the I.O. till date. So, considering the nature of offence, the learned Public Prosecutor requested to call for the up-to-date Case Diary at this stage.

On the other hand, Mr. Rahman, learned counsel for the informant has submitted that the petitioners are involved in the alleged offence and accordingly, he prays for rejecting the present anticipatory bail application by vacating the interim pre-arrest bail which was granted on 26.07.2023.

After hearing the submissions of learned counsels for both sides and also considering the materials available in the Case Diary, it is seen that the petitioners are suspected as an accused in this case. But, no other material has been collected by the I.O. till date nor dead body could be recovered. Further, the petitioners have already appeared before the I.O. and their statements recorded under Section 161 of Cr. P. C. and thus, I find it a fit case to extend the privilege of pre-arrest bail to the accused/petitioners. Accordingly, the interim pre-arrest bail vide order dated 26.07.2023, is hereby made absolute with a direction to the accused/petitioners to co-operate with the I.O. in further investigation of the case.

In terms of above, this anticipatory bail application stands disposed of.

The Case Diary be sent back.

JUDGE

Comparing Assistant