

GAHC010166272023



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

Case No. : AB/2638/2023

MOHENDRA NATH BORAH AND 4 ORS.
S/O SHIVA NATH BORAH, P/R/A HOUSE NO. 41, RUDRAPUR BYELANE,
CHANDRA CHOUDHURY PATH, BHETAPARA, GUWHAATI, ASSAM AND
P/R/O MAJGAON, TEOK, P.O.-JAKHARIA, DIST-JORHAT

2: SWAPNA BORAH
W/O MOHENDRA NATH BORAH
P/R/A HOUSE NO. 41
RUDRAPUR BYELANE
CHANDRA CHOUDHURY PATH
BHETAPARA
GUWHAATI
ASSAM AND P/R/O MAJGAON
TEOK
P.O.-JAKHARIA
DIST-JORHAT

3: ANIKESH BORAH
S/O MOHENDRA NATH BORAH
P/R/A HOUSE NO. 41
RUDRAPUR BYELANE
CHANDRA CHOUDHURY PATH
BHETAPARA
GUWHAATI
ASSAM AND P/R/O MAJGAON
TEOK
P.O.-JAKHARIA
DIST-JORHAT

4: DEBANANDA BORAH
S/O LT BHOLARAM BORAH
R/O HOUSE NO.42
RUDRAPUR BYELANE
CHANDRA CHOUDHURY PATH

BHETAPARA
GUWAHATI
ASSAM

5: RINA BORAH
W/O DEBANANDA BORAH
R/O HOUSE NO.42
RUDRAPUR BYELANE
CHANDRA CHOUDHURY PATH
BHETAPARA
GUWAHATI
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. D GAGAI

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

06.03.2024

Heard Mr. D.K. Baidya, learned counsel for the applicants and also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. Apprehending arrest in connection with Basistha P.S. Case No.439/2023, under Section 448/427/384/506/34 IPC, this application under Section 438 Cr.P.C. is preferred by five applicants, namely, Mohendra Nath Borah, Swapna Borah, Anikesh Borah, Debananda Borah and Rina Borah, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the

basis of an FIR lodged by one Smt. Manju Devi, on 26.07.2023. The essence of allegation made in the aforesaid FIR is that on 26.07.2023 in the afternoon, when the husband of the informant was not present, then one Anikesh Borah, Swapna Borah, Mohendra Nath Borah along with some unknown persons entered into her room and vandalized her furniture and also tried to kill her with a knife and also tried to assault her daughter. It is also stated that one civil case, being Title Suit No.160/2023 is pending before the Court of learned Munsiff No.1, Kamrup(M), Guwahati for final disposal, wherein status quo was granted in her favour and the said persons tried to vacate the suit premises forcefully and they have took away a sum of ₹ 2,00,000/- along with some other materials.

4. Mr. Baidya, learned counsel for the applicants submits that this Court vide order dated 31.07.2023 was pleased to grant interim protection to the applicants and pursuant to the said order, they had appeared before the I.O. on 02.08.2023 and cooperating with the investigating agency and further, Mr. Baidya submits that on seven occasions the learned Additional P.P. has failed to produce the case diary before this Court and therefore, it is contended to make the interim order dated 31.07.2023, absolute, in the same terms and conditions.

5. On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor, Assam, submits that he has not received the case diary.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record.

7. It appears that this petition was filed on 29.07.2023, and the interim protection was granted to the applicants vide order dated 31.07.2023, requiring the learned Additional P.P. to produce the case diary before this Court and thereafter, several dates were given to the learned Additional P.P. to produce the case diary before this Court. But the learned Additional P.P. has failed to produce the same before this Court. As more than 6 months have already been elapsed and as such, sufficient opportunities were granted to the learned Additional P.P. to produce the case diary before this Court and consequently, this Court is inclined to dispose of this anticipatory bail application without perusing the

case diary.

8. I have carefully gone through the petition and the documents placed on record and having considered the materials placed on record as well as the submission of learned Advocates of both the parties, custodial interrogation of the applicants seems to be not warranted here in this case and therefore, this Court is inclined to make the interim order dated 31.07.2023, absolute, in the same terms and conditions.

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

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant