

GAHC010168532024



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

Case No. : AB/2175/2024

MAFUZUR RAHMAN @ MAFUZ UR ROHMAN AND ANR
S/O- SHAHADOT ALI, R/O- VILL.- SADULLAHBARI, P.S. MANKACHAR,
DIST. SOUTH SALMARA MANKACHAR, ASSAM

2: MOFIDA KHATUN
W/O- SHAHADOT ALI
R/O- VILL.- SADULLAHBARI
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSA

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE LEARNED PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR A W AMAN, MR SARFRAZ NAWAZ, MR. SURAJIT DAS, MR
S A BARBHUYAN, SAMIM RAHMAN

Advocate for the Respondent : PP, ASSAM, MR. M R KHANDAKAR (INFORMANT)

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

30.08.2024

1. Heard learned counsel Mr. S. Nawaz for the petitioner Mofida Khatun.

2. The petitioner has filed this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with prayer for bail as she is behind bars since 23.08.2024 in connection with Mankachar Police Station Case No. 139/2024 registered under Sections 120(B)/302/34 of the IPC. This application is registered as B.A. No. 2573/2024.

3. The other petitioner Mafuzur Rahman @ Mafuz Ur Rohman has filed this application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with prayer for pre-arrest bail as he is apprehending arrest in connection with the aforementioned Mankachar P.S. Case No. 139/2024 and his application is registered as A.B. No. 2175/2024.

4. Heard Mr. B. B. Gogoi, learned Additional Public Prosecutor, Assam for the respondent State and Mr. M. R. Khandakar, learned counsel for the Informant.

5. The allegation against the petitioners is that they have conspired and committed murder of Rashida Khatun, the second wife of Shahadot Ali. Shahadot Ali got married to Rashida Khatun about 15 years back and they have been staying together in the same residence. It is submitted on behalf of the petitioners that the present petitioner, Mofida Khatun is Shahadot Ali's first wife and Mafuzur Rahman @ Mafuz Ur Rohman is Shahadot Ali's son from his first marriage. It is submitted that after Shahadot Ali got married to Rashida Khatun,

he abandoned them and since then, they have been staying in separate residences which is about 10 Kms away from Shahadot Ali's house. The allegation against all the accused named in the FIR is that they have staged a scene of dacoity, but in reality they have conspired to kill Shahadot Ali's second wife Rashida Khatun. The complainant has alleged that earlier also several attempts were made by the petitioners to eliminate Rashida Khatun.

6. Learned Additional Public Prosecutor has raised objection against the bail petition.

7. I have scrutinized the Case Diary. I have considered the submissions on behalf of both the petitioners in B.A. No. 2573/2024 and A.B. No. 2175/2024, that both the petitioners reside about 10 Kms away.

8. Learned counsel for the Informant has also raised objection stating that even if a person resides 10 Kms away, this cannot be a ground for exoneration. There can be every possibility that a person residing at a distance can be involved in a conspiracy to commit murder.

9. Substantiating the submissions, learned Additional Public Prosecutor has submitted that the post-mortem report clearly reveals that the victim was killed and several injuries have been detected by the Medical Officer which reveals that the prime accused Shahadot Ali cannot be the sole perpetrator.

10. I have considered the submissions at the Bar. All the evidences are circumstantial evidence. The submission of the learned counsel for the petitioners that both the petitioners were staying in a separate residence cannot be ignored. The Case Diary also reveals that investigation may have presumably progressed to a considerable extent.

11. I have considered the submission that the petitioner Mafuzur Rahman @ Mafuz Ur Rohman is an aspiring candidate and a medical student, and his admission process is scheduled to commence from 03.09.2024. The petitioner, Mofida Khatun is an elderly lady aged about 48 years.

12. The petitioners have pledged to co-operate with the remaining part of investigation and to abide by any bail conditions, if imposed upon them. The petitioners are local residents and they are not flight risks. In view of my foregoing discussions, the petitions are allowed. Interim order dated 20.08.2024 passed in A.B. No. 2175/2024 is hereby made absolute. The petitioner, Mofida Khatun is enlarged on bail on furnishing a bail bond of Rs.50,000/- (Rupees Fifty Thousand) with a suitable surety of like amount to the satisfaction of the learned CJM, South Salmara, Mankachar under the conditions that, both the petitioners:

(i) shall co-operate with the remaining part of

the investigation and shall appear on every fortnight till completion of the investigation,

(ii) The petitioners shall not temper with the evidence or exercise threats to the witnesses, and

(iii) The petitioners shall not leave the jurisdiction of the Court without prior permission.

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

14. In terms of the above observation, both the petitions, i.e., B.A. No. 2573/2024 and A.B. No. 2175/2024, stand disposed of.

15. Send back the Case Diary.

JUDGE

Comparing Assistant