

GAHC010177252024



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

Case No. : AB/2314/2024

OYBAR ALI AND 3 ORS.
S/O LATE NOSER ALI, R/O SINDURI PART-I, P.S.-AGOMONI, DIST-DHUBRI,
ASSAM, PIN-783301

2: KASHEM ALI
S/O KETO SK
R/O SINDURI PART-I
P.S.-AGOMONI
DIST-DHUBRI
ASSAM
PIN-783301

3: NUR HOSSAIN
S/O AYNAL SK.
R/O SINDURI PART-I
P.S.-AGOMONI
DIST-DHUBRI
ASSAM
PIN-783301

4: MOKBUL HOQUE
S/O AYNAL SK.
R/O 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, MR SOHAING

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 16.09.2024

- 1)** Heard Mr. J. Kalita, learned counsel for the petitioners. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State of Assam.
- 2)** This application under Section 438 Code of Criminal Procedure, 1973 has been filed by the petitioners, (1). Oybar Ali, (2). Kashem Ali, (3). Nur Hossain and (4). Mokbul Hoque, who are apprehending their arrest in connection with Agomoni P.S. Case No.33/2024 under Sections 143/147/148/341/447/323/325/326/392 of the Indian Penal Code.
- 3)** It is pertinent to mentioned here in that this is for the second time, the petitioners have approached this Court seeking anticipatory bail in connection with Agomoni P.S. Case No.33/2024.
- 4)** The earlier application filed by the petitioners which was registered as AB Case No.1725/2024 was rejected by order dated 18.07.2024 on the ground that there are incriminating materials against the petitioners in the Case Diary and, therefore, it was not felt at that time that a favorable order under Section 438 of the Cr.PC may be issued in favor of the petitioners.
- 5)** In the present application, the petitioner has raised a new ground that the petitioner No.1 has been suffering from the ailment of loss of eye sight and from old age ailments since last many years. No other new ground has been

mentioned in his second application, by the petitioner, for approaching this Court for the second time.

6) On the other hand, learned Additional Public Prosecutor has produced the Case Diary of Agomoni P.S. Case No.33/2024 and has submitted that there are sufficient incriminating materials against the petitioner in the Case Diary and the petitioner in approaching this Court for the second time for anticipatory bail has not mentioned any new ground in his second application.

7) I have considered the submissions made by learned counsel for both the sides and perused the materials available on record, it appears that the earlier application which was filed by the petitioners was rejected by this Court after perusal for the Case Diary and it was observed in this said order that there are incriminating materials against the petitioners, which does not justify issuance of a favorable order under Section 438 of the Cr.PC, 1973 against the petitioners.

8) It appears that the petitioner has mentioned only one new ground for approaching before this Court in the second time, i.e., the petitioner No.1 is suffering from ailments.

9) However, on perusal of the statements made in Paragraph No.6 of the anticipatory bail, it appears that he has been suffering from the said ailments since many years so this cannot be treated as a new ground.

10) Moreover, learned counsel for the petitioners has also submitted that though the victim in this case has sustained grievous injuries, the nature of injury has been caused by blunt weapons and, therefore, learned counsel for the petitioners has submitted that the case would not fall under Section 326 but Section 325 of the Indian Penal Code only.

11) However, it appears that this Court at an earlier occasion had rejected the

anticipatory bail application of the petitioners after perusal of the Case Diary and found the case not fit for grant of anticipatory bail to the petitioners, the petitioners have not been able to satisfy this Court any change of circumstances of the new ground for approaching this Court for the second time for grant of anticipatory bail.

12) Therefore, this Court is not inclined to grant anticipatory bail on the second application filed by the petitioners.

13) For above reasons, this anticipatory bail application stands disposed of.

14) Send back the Case Diary.

JUDGE

Comparing Assistant