

GAHC010219122023



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

Case No. : Crl.Pet./1055/2023

PABAN CHANDRA BORA AND ANR
S/O LT. MAHESWAR BORA
R/O NO. 1, PURAJANGHAL GAON,
P.O. DHOLAGURI, P.S. BAGIJAAN, DIST. GOLAGHAT, ASSAM

2: SRI DINO GOGOI
S/O BHUGESWAR GOGOI
R/O NO. 3

PURAJANGHAL GAON
P.O. DHOLAGURI
P.S. BOGIJAAN
DIST. GOLAGHAT
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SRI UPEN TAMULI
S/OLT. MAHENDRA TAMULI
R/O NO. 3
PURAJANGHAL GAON
P.O. DHOLAGURI
P.S. BOGIJAAN
DIST. GOLAGHAT
ASSAM

PIN-78561

Advocate for the Petitioner : K U AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 08.05.2024

Heard Mr. K.U. Ahmed, learned counsel for the petitioners. And also heard Mr. D.P. Goswami, learned Additional Public Prosecutor for the State/respondent No.1 and Ms. L. Devi, learned counsel for the respondent No. 2.

2. By filing this application under Section 482 Cr.P.C., both the petitioners have prayed for quashing of the order dated 18.07.2023 passed by the learned Sessions Judge, Golaghat on framing of charge under Section 302/34 IPC r/w Section 25 (1-B)/27 of Arms Act against the petitioners.

3. The brief fact of the case is that one Upen Tamuli lodged an FIR before the O/C, Bogijaan police station stating *inter alia* that on 14.02.2015 at about 6:15 p.m. his elder son Bupen Tamuli returned back from his shop at Purajanghal Chariali. When he reached in front of the gate, he was shot dead by some unknown miscreants. Though he was immediately shifted to K.K. Civil Hospital at Golaghat but the doctor declared him brought dead. Accordingly, a case was registered vide Bogijaan P.S. Case No. 14/2015 under Section 341/302 IPC r/w Section 25(1)(a)/27 of Arms Act. During investigation, it has come to the knowledge that the petitioners were involved in this case and accordingly they were arrested and subsequently, bail was granted to them. On their appearance before the learned trial court, charge was framed by the learned

Sessions Judge under Section 302/34 r/w Section 25(1-B)/27 of Arms Act.

4. The learned counsel for the petitioners has argued that the names of the petitioners were not reflected in the FIR and they were arrested purely on suspicion. The statement of the witnesses recorded under Section 161 Cr.P.C. also did not disclose anything regarding their involvement in the alleged offence of committing murder of the deceased.

5. The learned counsel for the petitioners has pointed out that the learned Sessions Judge passed an order by stating that on perusal of the case diary, it reveals that the accused persons were not parties to a criminal conspiracy to commit an offence and they have not possessed or carried prohibited arms or ammunition at the relevant point of time. As such, they were discharged from the offence under Section 120(B) of IPC and Section 25(I-A) of Arms Act. According to the learned counsel for the petitioners, if the petitioners were not carrying any arms at the relevant point of time, how charge could be framed under other sections of Arms Act.

6. The learned counsel for the petitioners also stated that the learned trial court has passed a contradictory order by stating that the petitioners were not carrying and possessing prohibited arms or ammunition at the relevant point of time, then how they committed the offence under the provisions of Arms Act. As such, the learned counsel for the petitioners has prayed for quashing of the order dated 18.07.2023 on framing of charge against the present petitioners.

7. The learned counsel for the petitioners has also made many factual submissions to demonstrate that the FIR was lodged on false and concocted facts just to harass the petitioners and the investigating officer without going deep into the matter in a cursory manner has submitted the charge sheet, and the trial court has taken cognizance without considering the matter in right perspective and, therefore, the

charge sheet, the order of the learned trial court, whereby the cognizance has been taken and charge was framed are bad in law and the same is liable to be quashed.

8. Mr. Goswami, learned Additional Public Prosecutor for the State/respondent No.1 while controverting the submission of the learned counsel for the petitioners, submits that, the allegations against the petitioners are under Section 302 IPC, committing murder of the deceased and possessing of arms and ammunition, with regard to the factual aspects of the case which cannot be appreciated at this stage, as only a prima facie case is required to be seen at the stage of framing of charge against the petitioners.

9. On perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against petitioners. All the submissions made at the bar, relate to the disputed questions of fact, which cannot be appreciated by this Court for exercising the power under Section 482 Cr.P.C. At this stage, only a prima facie case is to be seen in the light of the law laid down by the Hon'ble Supreme Court in **AIR 2012 Supreme Court 1747, Bhushan Kumar and Anr. v. State (NCT of Delhi) and Anr., AIR 2015 Supreme Court 923, Sunil Bharti Mittal v. Central Bureau of Investigation, in Kishun Singh and Ors. v. State of Bihar (1993) 2 SCC 16, State of W.B. and Anr. v. Mohd. Khalid and Ors. (1995) 1 SCC 684, in S.K. Sinha, Chief Enforcement Officer v. Videocon International Limited and Ors. (2008) 2 SCC 492, in M/s. India Carat Pvt. Ltd. Vs. State of Karnataka 1989(26) ACC 280 (SC), in Minu Kumari and another Vs. State of Bihar and others MANU/SC/8098/2006 : 2006 (4) SCC 359, in the case of Nupur Talwar vs C.B.I. reported in 2013 AIR SCW 369 and State of Gujrat Vs Afroz Mohammed Hasanfatta, reported in MANU/SC/0139/2019.**

10. Therefore, keeping in view the facts and circumstances of the case, the prayer

for quashing the Charge-sheet, framing of charge and the proceedings of the case in connection with Sessions Case No. 64/2022 is hereby refused.

11. In view of the above, the criminal petition is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant