

GAHC010230352024



2024:GAU-AS:11680

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

Case No. : Bail Appln./3376/2024

AINUL HOQUE AND ANR
S/O MD. NURUL HOQUE
PERMANENT RESIDENT OF VILL- PUTHIMARI CHAPARI (GASBARI PART),
P.O. AND P.S. MANGALDOI, DIST. DARRANG, ASSAM
PIN-784529
PRESENT ADDRESS-
VILL- NO. 1 KACHUTALI, P.S. SONAPUR,
DIST. KAMRUP (METRO), ASSAM
PIN-782402

2: MAINUDDIN
S/O AZIMUDDIN
PERMANENT RESIDENT OF VILL- PUTHIMARI CHAPARI (GASBARI PART)
P.O. AND P.S. MANGALDOI

DIST. DARRANG
ASSAM
PIN-784529
PRESENT ADDRESS-
VILL- NO. 1 KACHUTALI
P.S. SONAPUR
DIST. KAMRUP (METRO)
ASSAM
PIN-78240

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M K HUSSAIN, MR. M ALOM, MS. F H AHMED, MRS. S Y AHMED

Advocate for the Respondent : PP, ASSAM,

Linked Case : Bail Appln./3092/2024

MD ALAMIN ALI AND 9 ORS.
S/O. MD MOKKAJEL ALI

2: MD. MAHIRUDDIN @ MOHIR UDDIN @ MOHIR ALI
S/O. ASURUDDIN @ ASOR UDDIN

3: MD. SADIQUL ISLAM @ SHADIKUL ISLAM
S/O. MD. ABDUL RASHID @ A RASID

4: MD. KHAIRUL HUSSAIN
S/O. MD. MOKKAJEL ALI

5: MD. RAHIM ALI
S/O. MD. SUBHAN ALI

6: MD MEHBUB ALAM CHOUDHURY @ MAHBUB ALAM CHOUDHURY
S/O. LT. AFTAR HUSSAIN CHOUDHURY

7: MD ABDUL HANNAN
MD. MUSTAFA HUSSAIN

8: MD. ABUL HUSSAIN
S/O. LATE ISHAB ALI @ LUCHUB ALI

10: SURMAN ALI
S/O. LATE BAHEJ ALI

11: MUKTAR ALI
S/O. MATLEB MAYA
ALL ARE RESIDENT OF VILL.- NO.1 KACHUTOLI
P/S. SONAPUR
DIST.- KAMRUP(M)
ASSAM
VERSUS

THE STATE OF ASSAM
REP BY THE PP
ASSAM

Advocate for : MR SARFRAZ NAWAZ
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case : Bail Appln./3287/2024

AICHA KHATUN
W/O ABDUL RACHID
R/O VILL- NO. 1 KACHUTALI
P.S.- SONAPUR
DIST- KAMRUP (M)
ASSAM

VERSUS

STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for : MR A W AMAN
Advocate for : PP
ASSAM appearing for STATE OF ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 26.11.2024

Since all these Bail Applications have arisen out of the same F.I.R., all the Bail Applications are taken up together and disposed of by this common order.

2. Heard Mr. M Alom, learned counsel for the petitioners in Bail Appln. No.

3376/2024 and Mr. S. Nawaz, learned counsel for the petitioners in Bail Appln. No. 3092/2024 & Bail Appln. No. 3287/2024. Also head Mr. M. P. Goswami, learned Additional Public Prosecutor for the State respondent.

3. These bail applications under Section 483 of BNSS, 2023 have been preferred praying for grant of bail to the accused/ petitioners in the respective bail applications in connection with Sonapur P.S. Case No. 191/2024, under Sections 191(2)/191(3)/149/121(2)/132/117(2)/118(2)/109/324(4)/61(2)/125/324 (5) of BNS, 2023 *read with* Sections 3/4 of Prevention of Damage to Public Property Act, 1984.

4. Case Diary has been received. Perused the same. Heard both sides.

5. It is submitted by Mr. Nawaz, learned counsel for the petitioners in Bail Appln. No. 3092/2024 & Bail Appln. No. 3287/2024, that the present accused/petitioners are innocent. On the day of incident, when the people from Administration visited the place of incident for eviction of the petitioners along with others from the village alleging that they have encroached upon the government land, there was retaliation from the petitioners' side and as a result of which, the police personnel, who were along with the eviction team, had started firing and for which, some of the villagers, including some of the petitioners, also sustained bullet injuries. He further submitted that 2 (two) children also sustained bullet injuries and considering their conditions, they were already been granted bail by the learned Trial Court below. In Bail Appln. No. 3092/2024, out of 11 numbers of petitioners, the petitioner No. 9- Md.

Abdul Karim also sustained bullet injuries, but without his complete recovery, he was remanded to judicial custody for which he died during the judicial custody and accordingly, his name was already withdrawn from the list of the petitioners. He further submitted that 2 (two) numbers of villagers are already died due to sustaining bullet injuries and several people also sustained severe injuries due to firing by the police personnel, who accompanied the eviction team. Mr. Nawaz further submitted that though the case is registered under Sections 191(2)/191(3)/149/121(2)/132/117(2)/118(2)/109/324(4)/61(2)/125/324(5) of BNS, 2023 *read with* Sections 3/4 of Prevention of Damage to Public Property Act, 1984, but the said Sections do not attract against the present petitioners. There are no ingredients that the present petitioners were waging war against the State, as alleged in the F.I.R. However, it is a fact that there was a dispute between 2 (two) groups, i.e. the villagers, who were alleged to have been encroached over the government land, and the eviction team, but the villagers sustained severe injuries due to the firing by the police personnel and some of them also sustained bullet injuries. Mr. Nawaz also submitted that the petitioner Nos. 1, 2 & 8 and the petitioner Nos. 10 & 11 in Bail Appln. No. 3092/2024 are behind the bar for last 74 days and 59 days, respectively, and hence, considering their length of detention, they may be enlarged on bail. More so, the I.O. got sufficient time for their custodial interrogation keeping them in custody and hence, their further custodial interrogation may not be necessary for the interest of the investigation. He further submitted that the petitioner in Bail Appln. No. 3287/2024 is a lady, who also sustained injury at the relevant time of incident, and she is also behind the bar for last 57 days. Accordingly, he submitted that no purpose will serve keeping the accused/ petitioners in further custody as the I.O. got sufficient time for their custodial interrogation.

6. Mr. Alam, learned counsel for the petitioners in Bail Appln. No. 3376/2024, also subscribe to the submissions made by the Mr. Nawaz, learned counsel for the petitioners in Bail Appln. No. 3092/2024 & Bail Appln. No. 3287/2024. He also submitted that the accused/petitioners in Bail Appln. No. 3376/2024 are in custody for last 74 days and hence, considering their length of detention, they may be enlarged on bail.

7. Mr. Goswami, learned Additional Public Prosecutor, submitted in this regard that a conspiracy was made by the villagers at the instigation of other people and they came armed with weapons like dao, lathi including other sharp object to drive out the eviction team from the place and for which, the police personnel also had to take shelter on the other side of the railway track and also some of the other police personnel as well as the eviction team also had to hide themselves to save their life. More so, many of the police personnel sustained injuries including lacerated and sharp cut injuries and even one police officer also sustained bullet injuries in the said incident. Mr. Goswami further submitted that as the petitioners, along with others, made a conspiracy and they staged war against the Administration, who came for eviction of the petitioners along with others from their unauthorized occupancy, and hence, there are sufficient materials to attract Section 149/121(2)/61(2) of BNS and accordingly, he raised objection and submitted that the further custodial interrogation of the present accused/petitioners may be required for the interest of investigation.

8. After hearing the submissions made by the learned counsels for both sides, I have also perused the Case Diary and it is seen that the I.O. has

collected sufficient incriminating materials against the present petitioners during investigation. It is also a fact that some of the police personnel sustained injuries including sharp cut injury and lacerated and one of the police personnel also sustained bullet injury. However, in the same time, it also cannot be denied that some of the persons from the petitioners' side/villagers also sustained bullet injuries at the time of incident. It is also reveal from the Case Diary that on the day of incident, there was a huge gathering of people and they armed with the weapon to deter the public servant and the police personnel who accompanied the eviction team and they retaliated the police personnel and the other persons from the Administrative at the time of eviction. But, considering the length of detention already undergone by the present accused/ petitioners, I find that the I.O. got sufficient time for their custodial interrogation and hence, further custodial interrogation of the present petitioners may not be required for the interest of the investigation. More so, it is seen that the I.O. has not made any prayer for police remand subsequent to the arrest of the accused/petitioners. Thus, considering all these aspects of the case, including the period of detention already undergone by the accused/petitioners, I find it a fit case to extend the privilege of bail to the accused/ petitioners.

9. Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only each with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup(M), Guwahati, the accused/petitioners, namely, (i) Ainul Hoque, (ii) Mainuddin (in Bail Appln. No. 3376/2024), (iii) Md. Alamin Ali, (iv) Md. Mahiruddin @ Mohir Uddin @ Mohir Ali, (v) Md. Sadiqul Islam @ Shadikul Islam, (vi) Md. Khairul Hussain, (vii) Md. Rahim Ali, (viii) Md. Mehbub Alam Choudhury @ Mahbub Alam Choudhury, (ix)

Md. Abdul Hannan, (x) Md. Abul Hussain, (xi) Surman Ali, (xii) Muktar Ali (in Bail Appln. No. 3092/2024), & (xiii) Aicha Khatun (in Bail Appln. No. 3287/2024), be enlarged on bail, subject to the following conditions:

- (i) that the petitioners shall make themselves available for interrogation by the Investigating Officer as and when called for;
- (ii) that the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
- (iii) that the petitioners shall not leave the jurisdiction of the learned Chief Judicial Magistrate, Kamrup(M), Guwahati, without prior permission.

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

11. Send back the Case Diary.

JUDGE

Comparing Assistant