

GAHC010269062023



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

Case No. : AB/4075/2023

KUDRAT ALI AND 6 ORS
S/O LATE ISMAIL ALI
R/O VILL- BHOGAMUR,
P.S. SAMAGURI
DIST. NAGAON, ASSAM

2: IDRISH ALI
S/O LATE ISMAIL ALI
R/O VILL- BHOGAMUR

P.S. SAMAGURI
DIST. NAGAON
ASSAM

3: ZAKIR HUSSAIN
S/O IDRISH ALI
R/O VILL- BHOGAMUR

P.S. SAMAGURI
DIST. NAGAON
ASSAM

4: MAQBUL HUSSAIN
S/O IDRISH ALI
R/O VILL- BHOGAMUR

P.S. SAMAGURI
DIST. NAGAON
ASSAM

5: AMIR HAMZA
S/O IDRISH ALI
R/O VILL- BHOGAMUR

P.S. SAMAGURI
DIST. NAGAON
ASSAM

6: MUBARAK ALI
S/O IDRISH ALI
R/O VILL- BHOGAMUR

P.S. SAMAGURI
DIST. NAGAON
ASSAM

7: MUKSHIDUL HUSSAIN
S/O IDRISH ALI
R/O VILL- BHOGAMUR

P.S. SAMAGURI
DIST. NAGAON
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N K KALITA

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

05.01.2024

Heard Mr. NK Kalita, learned counsel for the petitioner. Also heard learned Additional Public Prosecutor, Assam.

2. The petitioners, namely, Kudrat Ali, Idrish Ali, Zakir Hussain, Maqbul Hussain, Amir Hamza, Mubarak Ali and Mukshidul Hussain have approached this court for the second time praying for grant of pre arrest bail, who are apprehending

arrest in connection with Samaguri PS case No. 249/2023 under Section 147/341/326/307/392 IPC added Section 302 IPC.

3. This court after perusal of the case diary rejected such prayer for the petitioner for grant of pre arrest bail under its order dated 12.10.2023 passed in AB 3365/2023, after finding that sufficient incriminating materials are available against the petitioners in the case diary.
4. Under its order dated 04.12.2023, this court had again called for the case diary. Accordingly, the case diary has been produced by the learned Additional Public Prosecution
5. It is argued by Mr. NK Kalita, learned counsel for the petitioners that since long there has been civil dispute between the families of the informant and the petitioners herein and earlier also there were fight between the parties wherein the petitioner got injured and criminal cases are pending for trial.
6. From the case diary, it is revealed that though FIR was registered under Section 147/341/326/307/392 IPC subsequently one injured victim namely Jainal Abedin expired during treatment. Also perused the post-mortem report. This court after perusal of the material available on record and after finding sufficient incriminating materials against the petitioners more particularly considering the eye witnessess' account rejected the prayer of anticipatory bail to the petitioners. It is found that the petitioners, namely Idrish Ali and Zakir Hussain inflicted the major assault and other petitioners were part of the attacking team and assisted the said Idrish Ali and Zakir Hussain. Nothing has been brought on record by the petitioners to take a different view in this second bail application from the views taken by this court in its order dated 12.10.2013.
7. So far relating to the existence of continuous dispute between the parties, this court is of the opinion that in view of existence of sufficient materials as discussed hereinabove the earlier fight between the parties and pendency of

criminal case between the parties cannot be treated as a new ground to grant privilege of anticipatory bail.

8. That being the position, the prayer of bail for the petitioners stands rejected. However, while parting with the record, it is made clear that the observations made in this order is for the purpose of consideration of the prayer of bail only and the same should not be treated as affirmation of merit of the prosecution case.
9. With the aforesaid determination and observations, this bail application stands dismissed.
10. Case diary be returned back to the learned Additional Public Prosecutor.

JUDGE

Comparing Assistant