

GAHC010276152023



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

Case No. : Bail Appln./4470/2023

MD ABUL HASIM AND 8 ORS
S/O MD. SINARUDDIN
R/O BARUKATI
PO.S. BHURAGAON
DIST. MORIGAON, ASSAM

2: MD. ANWAR HUSSAIN
S/O MD. SURHAB ALI
R/O MUWAMARI
P.S. KHARUPETIA
DIST. DARRANG
ASSAM

3: MD. ATIKUL ISLAM
S/O MD. ABUL HASIM
R/O MUWAMARI
P.S. KHARUPETIA
DIST. DARRANG
ASSAM

4: MD. SHAHIAL IMRAN
S/O ABDUL HASIM
R/O MUWAMARI
P.S. KHARUPETIA
DIST. DARRANG
ASSAM

5: MD. SAMSUDDIN AHMED
S/O ATAB ALI
R/O MUWAMARI
P.S. KHARUPETIA
DIST. DARRANG
ASSAM

6: MD. MUSTAFA KAMAL
S/O MUSLIMUDDIN
R/O MUWAMARI
P.S. KHARUPETIA
DIST. DARRANG
ASSAM

7: MD. ASHADUL HAQUE
S/O DULA HUSSAIN
R/O MUWAMARI
P.S. KHARUPETIA
DIST. DARRANG
ASSAM

8: MD. SABAR ALI
S/O ABDULLA
R/O MUWAMARI
P.S. KHARUPETIA
DIST. DARRANG
ASSAM

9: MD. SAFIUR RAHMAN
S/O ATAB ALI
R/O MUWAMARI
P.S. KHARUPETIA
DIST. DARRANG
ASSA

VERSUS

THE STATE OF ASSAM
NOTICE THROUGH PP, ASSAM

Advocate for the Petitioner : MR. P J SAIKIA

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 08.01.2024

1) Heard Mr. P. J. Saikia, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent as well as Mr. A. M. Ahmed, learned counsel for the informant.

2) This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by 9 numbers of petitioners, namely, 1. Md Abul Hasim, 2. Md. Anwar Hussain, 3 Md. Atikul Islam, 4. Md. Shahial Imran, 5. Md. Samsuddin Ahmed, 6 Md. Mustafa Kamal, 7. Md. Ashadul Haque, 8. Md. Sabar Ali, and 9. Md. Safiur Rahman, who have been detained behind the bars since 25.10.2023 (for the last 75 days) in connection with Kharupetia P. S. Case No. 204/2023 under Sections 120B/302/326/325/379 of the Indian Penal Code.

3) The gist of accusation in this case is that on 24.10.2023, one Abdul Malik had lodged an FIR before the Officer-in-Charge of the Kharupetia Police Station, *inter-alia*, alleging that on 24.10.2023 at about 5.00 am in the morning when the brother of the first informant, namely, Abu Jahed @ Ghariand one Malia Khatun went to attend a meeting called by Abul Hasim regarding a dispute regarding possession of a land property situated at Kharupetia town Ward No. 7, the accused persons named in the FIR assaulted both the above named persons namely Abu Jahed and Malia Khatun with lathi, road, stones etc. resulting in instant death of both the above named persons.

4) It is also alleged that many other persons were seriously injured in the said incident.

5) Learned counsel for the petitioners has submitted that it is the first informant and his family members who tried to dispossess the present petitioners from their land and in the event a fighting occurred wherein the informant and his family members also suffered injuries and to that effect an FIR was lodged by one Nurul Nihar against the informant and his family members.

6) It is also submitted by the learned counsel for the petitioners that though the family members of the present petitioners also sustained injuries, however, police even after registration of the FIR had not properly investigated the case filed by the present petitioners.

7) It is further submitted by learned counsel for the petitioners that otherwise also the petitioners have been detained behind the bars for last 75 days and considering the period of detention already undergone the petitioners may be allowed to go on bail.

8) On the other hand, Mr. P. Borthakur, learned Additional Public Prosecutor as well as Mr. M. A. Ahmed, learned counsel for the informant have vehemently opposed the grant of bail to the present petitioners, and have submitted that the two deceased persons who succumbed to the injuries due to the assault committed by the present petitioners were brutally killed by the present petitioners and in support of his submissions, learned counsel for the informant has produced certain photographs of the deceased persons.

9) On the other hand, learned Additional Public Prosecutor has also opposed the grant of bail to the present petitioners and has also submitted that in the statement recorded under Section 161 of the Code of Criminal Procedure, 1973 by the Investigating Officer, the witnesses have made implicating statement against the present petitioners and as still some of the co-accused

are yet to be arrested.

10) I have considered the submission made by learned counsel for the petitioners as well as learned Additional Public Prosecutor and learned counsel for the informant and have perused the materials available on record including the case diary of the Kharupetia P. S. Case No. 204/2023.

11) Considering the fact that there are materials available on record which shows that both the deceased persons were brutally killed by mob violence of which the present petitioners were a part and considering the fact that there are sufficient incriminating materials against all the present petitioners on record, this Court does not find it appropriate to grant bail to the present petitioners at this stage.

12) In view of the above facts, the prayer for bail to all the above named petitioners is hereby rejected.

13) Send back the case diary

JUDGE

Comparing Assistant